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# REVISED CODES OF MONTANA

## VOLUME 3

### Part 1

### 1974 Cumulative Pocket Supplement

#### *Containing*

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE  
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF  
REPLACEMENT VOLUME 3 (PART 1) OF  
THE 1947 REVISED CODES

#### AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 3  
(PART 1) THROUGH VOLUME 518, PACIFIC  
REPORTER (2nd SERIES)

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THE ALLEN SMITH COMPANY

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# REVISED CODES OF MONTANA

VOLUME 3

Part 1

1974 Cumulative Pocket Supplement

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AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 3  
(PART 1 THROUGH VOLUME 3E)  
REPORTER (2ND SERIES)

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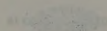
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# MONTANA REVISED CODES

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### CHAPTER 1—STATE BOARD OF FORESTRY—FOREST CONSERVATION AND FIRE PROTECTION

#### Section 28-101.1. Purpose of chapter.

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- 28-104. Responsibility of actual owner of land or timber—scope of act.
- 28-105. Powers of board.
- 28-106. Powers and duties of department.
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#### 28-101. Repealed.

##### Repeal

Section 28-101 (Sec. 1, Ch. 128, L. 1939; Sec. 1, Ch. 141, L. 1941; Sec. 1, Ch. 169, L. 1959), relating to creation and

membership of the state board of forestry, was repealed by Sec. 208, Ch. 253, Laws of 1974.

**28-101.1. Purpose of chapter.** It is the purpose of this chapter to provide for the protection and conservation of forest resources, range, and water, regulation of streamflow, and the prevention of soil erosion. It is further the purpose of this chapter to more adequately promote and facilitate the co-operation, financial and otherwise, between the state and public and private agencies which are associated in such work.

History: En. 28-101.1 by Sec. 1, Ch. 253, L. 1974.

revision of the laws relating to the department of natural resources and conservation.

**Title of Act**

An act for the codification and general

**28-102. Repealed.**

**Repeal**

Section 28-102 (Sec. 2, Ch. 128, L. 1939), relating to the functions of the

state board of forestry, was repealed by Sec. 208, Ch. 253, Laws of 1974.

**28-103. Definitions.** Unless the context requires otherwise, in this chapter:

(1) "Forest land" means land which has enough timber, standing or down, slash, or brush, to constitute in the judgment of the board a fire menace to life or property; grassland and agricultural areas are included when those areas are intermingled with or contiguous to areas of forest land.

(2) "Lands" for conservation purposes means all forest lands within this state which are officially classified by the board as forest lands in accordance with section 28-104(b).

(3) "Forest fire" means a fire burning uncontrolled on forest lands.

(4) "Organized forest fire protection district" means a definite forest land area, the boundaries of which are fixed, and wherein forest fire protection is provided through the medium of an agency recognized by the board.

(5) "Recognized agency" means an agency representing owners of forest lands in an organized forest fire protection district, organized for the purpose of providing forest fire protection in the district and recognized by the board as giving adequate fire protection to forest lands in accordance with rules adopted by the board. A public agency administering and protecting forest lands may also be recognized by the board as such an agency.

(6) "Forest fire season" means the period of each year beginning on May first and ending on September thirtieth, inclusive; however, in the event of excessive or great fire danger, this period may be expanded when in the judgment of the department dangerous fire conditions exist. When expanded, the department shall give public notice.

(7) "Forest fire protection" means the work of prevention, detection and suppression of forest fires.

(8) "Protection zone" means a broad area within which the forest fire protection costs are approximately the same. Protection zones shall be designated by the department, with the approval of the board.

(9) "Conservation" means the protection and wise use of forest, forest range, forest water, and forest soil resources in keeping with the common welfare of the people of this state.

(10) "Owner" means the person, firm, association or corporation having the actual, beneficial ownership of forest land, or timber, other than an easement, right of way, or mineral reservation.

(11) "Board" means the board of natural resources and conservation, provided for in section 82A-1509.

(12) "Department" means the department of natural resources and conservation, provided for in Title 82A, chapter 15.

**History:** En. Sec. 3, Ch. 128, L. 1939; amd. Sec. 1, Ch. 216, L. 1955; amd. Sec. 1, Ch. 93, L. 1959; amd. Sec. 1, Ch. 30, L. 1971; amd. Sec. 2, Ch. 253, L. 1974.

#### Amendments

The 1971 amendment inserted subdivisions (2) and (9).

The 1974 amendment inserted the introductory sentence; deleted "for fire protection purposes" after "Forest land" in subdivision (1); substituted "department" for "state forester" in subdivisions (6) and (8); added subdivisions (11) and (12); and made minor changes in phraseology, punctuation and style.

**28-104. Responsibility of actual owner of land or timber—scope of act.** (1) If the owner does not appear upon the public records as the holder of the legal title to the land or timber, he is nevertheless primarily responsible for the performance of the acts and duties imposed upon him by this chapter. Where the owner of the timber is not the owner of the land, the primary responsibility for the performance of the acts and duties imposed by this chapter is upon the owner of the timber.

(2) Sections 28-101.1 through 28-129 apply to all forest lands within this state which are officially classified by the board as forest lands according to the definition of forest land in section 28-103.

**History:** En. Sec. 4, Ch. 128, L. 1939; amd. Sec. 3, Ch. 141, L. 1941; amd. Sec. 1, Ch. 94, L. 1959; amd. Sec. 3, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment substituted "chap-

ter" for "act" in subsection (1); substituted "Sections 28-101.1 through 28-129" in subsection (2) for "Sections 28-101 through 28-129"; and made minor changes in phraseology and style.

#### **28-105. Powers of board.** The board may :

(1) Classify the forest land areas of the state for which conservation and fire protection measures are reasonably required, and change or modify the classification from time to time as in its judgment is proper.

(2) Create organized forest fire protection districts. Before a district is created the board shall hold a hearing in any county in which the proposed district or a part thereof is included and the department shall give notice of the hearing at least twenty (20) days in advance thereof to all owners to be affected by the proposed district. Service of the notice may be made by registered or certified mail or by publication in a newspaper published in the county in which the hearing is to be held, and if no newspaper is published in the county then in a newspaper having a general circulation therein. A forest fire protection district may not be created unless approved in writing by vote of not less than fifty-one per cent (51%) of the owners representing at least fifty-one per cent (51%) of the acreage to be involved in the proposed forest fire protection district.

(3) Adopt and enforce through the department reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of this chapter; however, these rules may not conflict with the powers of the board of land commissioners.

**History:** En. Sec. 5, Ch. 128, L. 1939; amd. Sec. 1, Ch. 90, L. 1959; amd. Sec. 1, Ch. 83, L. 1963; amd. Sec. 1, Ch. 149, L. 1967; amd. Sec. 4, Ch. 253, L. 1974.

#### Amendments

The 1963 amendment added the proviso to subdivision (2).

The 1967 amendment in subdivision (2) decreased from 75% to 51% the number



of property owners required to approve creation of the proposed district.

The 1974 amendment inserted "department" before "shall give notice" in the second sentence of subdivision (2); deleted a former third subdivision which stated "To provide through the state forester for forest fire protection of any forest lands by the state forester's organization, or by contract or any other feasible means, in co-operation with any federal, state or other recognized agency or agencies"; inserted "through the department" after "enforce" in the first clause of subdivision (3); substituted "chapter" for "act" in the first clause of

subdivision (3); deleted a final subdivision relating to co-operation with the federal government; and made minor changes in phraseology, punctuation and style.

#### Effective Dates

Section 2 of Ch. 83, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 27, 1963.

Section 2 of Ch. 149, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 24, 1967.

**28-106. Powers and duties of department.** (1) The department may give technical and practical advice to the farmers of the state concerning forest, range, water, and soil conservation and the establishment and maintenance of woodlots, windbreaks and shelters.

(2) The department may provide for forest fire protection of any forest lands through the department or by contract or any other feasible means, in co-operation with any federal, state, or other recognized agency.

(3) The department shall co-operate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state.

(4) The department shall assist the department of state lands in the protection, economic development, and use of the state forests and forest land held by the state for the purposes and benefit of the common schools and state institutions.

**History:** En. Sec. 6, Ch. 128, L. 1939; amd. Sec. 5, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "board" in subsection (1); inserted "range" and "water" after "forest" in subsection (1); added subsections (2) through (4); and made minor changes in phraseology and style.

### 28-107. Repealed.

#### Repeal

Section 28-107 (Sec. 7, Ch. 128, L. 1939), directing the state board of for-

estry to assist the state board of land commissioners, was repealed by Sec. 208, Ch. 253, Laws of 1974.

**28-109. Duty of owner of classified forest land.** (1) An owner of forest land classified as such by the board shall protect against the starting or existence, and suppress the spread, of fire on that land during the full period of each forest fire season. This protection and suppression shall be in conformity with reasonable rules and standards for adequate fire protection adopted by the board. If the owner does not provide for the protection and suppression, the department may provide it, at a cost to the landowner of not more than sixteen cents (16¢) per acre per year for Class I land and not more than five cents (5¢) per acre per year for Class II land; in the event thereof, the owner of the land shall pay to the county treasurer of the county in which the land is situated the charge for the same approved by the department, in accordance with

this chapter. No other charges may be assessed those landowners participating, except in cases of proven negligence on the part of the landowner or his agent.

(2) The forest land of Montana shall be classified for protection and assessment purposes as follows:

(a) Class I Land: forest land primarily suitable for production of timber, and forest land primarily suitable for joint use for timber production and the grazing of livestock as a permanent or semipermanent joint use or as a temporary joint use during the interim between logging and reforestation.

(b) Class II Land: lands primarily suitable for grazing or other agricultural purposes, which are intermingled with or contiguous to the land described in subsection (a) above.

(c) Class III Land: lands primarily suitable for grazing or other agricultural purposes, including structures and improvements, which are within the forest fire protection areas but do not meet the detailed definitions of lands described in subsection (b) above. These lands may only be listed for payment when requested by the landowner at rates determined by the department and shall be submitted to the county assessor for collection and disposition as provided in section 28-111.

**History:** En. Sec. 9, Ch. 128, L. 1939; amd. Sec. 2, Ch. 141, L. 1941; amd. Sec. 1, Ch. 188, L. 1955; amd. Sec. 1, Ch. 91, L. 1959; amd. Sec. 1, Ch. 148, L. 1967; amd. Sec. 1, Ch. 252, L. 1974; amd. Sec. 6, Ch. 253, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 252 and once by Ch. 253. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

The 1967 amendment added subdivision (c) in the second paragraph.

Chapter 252, Laws of 1974, increased the protection cost to owners of Class I land from ten cents to sixteen cents per acre and for owners of Class II land from three cents to five cents per acre.

Chapter 253, Laws of 1974, inserted the numerical subsection designations at the beginning of the paragraphs; substituted "department" for "board" in two places in the third sentence of subsection (1); substituted "this chapter" for "this act" at the end of the third sentence in subsection (1); substituted "department" for "state forester" in the last sentence of subdivision (2) (c); and made minor changes in phraseology and punctuation.

#### Effective Dates

Section 2 of Ch. 148, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 24, 1967.

Section 2 of Ch. 252, Laws 1974, provided the act should be in effect from and after its passage and approval. Approved March 21, 1974.

#### References

Stocking v. Johnson Flying Service, 143 M 61, 387 P 2d 312.

**28-110. What constitutes compliance.** (1) An owner of Class I or Class II forest lands within an organized forest protection district, while a member of, or while participating in a recognized agency for forest protection shall be considered to have fully complied with the requirements of section 28-109.

(2) In establishing boundaries of organized forest fire protection districts covering Class I or Class II forest lands, the board may for the purpose of administrative convenience designate roads, pipelines, streams, or other recognizable landmarks as boundaries.

**History:** En. Sec. 10, Ch. 128, L. 1939; amd. Sec. 1, Ch. 92, L. 1959; amd. Sec. 7, Ch. 253, L. 1974.

#### **Amendments**

The 1974 amendment substituted "cov-

ering Class I or Class II forest lands" in subsection (2) for "covering forest lands described in section 28-109 (a) and (b)"; and made minor changes in phraseology and style.

**28-111. Determination of costs of fire protection—certification—tax levy.** (1) The department shall prepare a fire protection plan for the approval of the board in which fire protection costs for each classification within each protection zone are determined. The board shall establish the portion of the planned fire protection costs to be borne by the state, and the portion to be borne by the owners of classified forest land. The department shall request the legislature to appropriate the state's portion as approved by the board. After the appropriation is made by the legislature, the department shall cause an assessment to be made on the owners of classified forest land, as specified in section 28-109, sufficient to bring the total amount received to the amount specified in the approved plan.

(2) On or before the second Tuesday in August of each year, the department shall determine the names of all owners who have failed to provide the forest fire protection for their lands required by this chapter, together with the description of the lands and their acreage, and calculate the total amount due to the department from each owner for forest fire protection, which amount may not exceed the maximum specified in section 28-109.

(3) The department shall certify in writing to the county assessor of each county the names of these owners of forest lands in his county, together with a description of their lands and a statement of the amount found to be due and owing by each of the owners to the department for forest fire protection.

(4) Upon receiving the certificate from the department showing the amount due, the county assessor shall extend the amounts upon the county tax rolls covering the lands, and the sums shall become obligations of the owner to be paid and collected in the same manner and at the same time and with like penalties as general state and county taxes upon the same property are collected. All sums collected shall be promptly transmitted to the state treasurer, who shall deposit them in the federal and private grant clearance fund for distribution in accordance with section 28-124.

**History:** En. Sec. 11, Ch. 128, L. 1939; amd. Sec. 1, Ch. 95, L. 1959; amd. Sec. 215, Ch. 147, L. 1963; amd. Sec. 8, Ch. 253, L. 1974.

#### **Amendments**

The 1963 amendment, in the last sentence in the fourth paragraph, substituted "the agency fund to the credit of the state forester" for "a special fund designated the foresters' co-operative work fund, as provided for in section 81-1410."

The 1974 amendment substituted "department" for "state forester" in the first

and third sentences of subsection (1); substituted "department" for "board" in the fourth sentence of subsection (1), near the end of subsection (2) and near the end of subsection (3); substituted "department" for "secretary" near the beginnings of subsections (2), (3) and (4); substituted "by this chapter" for "by this act" in subsection (2); substituted "maximum specified in section 28-109" for "maximum hereinbefore specified" at the end of subsection (2); substituted "in the federal and private grant clearance fund for distribution in



accordance with section 28-124" in subsection (4) for "in the agency fund to the credit of the state forester"; and made

minor changes in phraseology, punctuation and style.

**28-112. Payment under protest.** An owner who is required to pay to the county treasurer any sum for forest protection as required by this chapter and who contends that he is not legally obligated to pay the sum or some part thereof, shall pay it to the county treasurer under written protest stating the reasons for the protest. The payment under protest, and all proceedings subsequent thereto, shall be in conformity with the law of this state providing for the payment of taxes under protest and action to recover the same. In the hearing and determination of any action to recover the payment under protest, all questions of the legality and reasonableness of the proceedings of the board and the department may be reviewed and decided.

**History:** En. Sec. 12, Ch. 128, L. 1939; amd. Sec. 9, Ch. 253, L. 1974.

**Amendments**

The 1974 amendment substituted "this

chapter" for "this act" in the first sentence; inserted "and the department" after "board" in the last sentence; and made minor changes in phraseology.

**28-113. Amount due for protection—lien on land—remedies.** Whenever the department provides forest protection during a forest fire season for any forest land or timber not protected by the owner thereof as required by this chapter, the amount due for the forest protection is a lien upon the land or timber which shall continue until such time as the amount due is paid. The lien has the same force, effect and priority as general tax liens under the laws of the state, and is subject and inferior only to tax liens on the lands. The county attorney of the county in which the land is situated shall on request of the department foreclose the lien in the name of the state and in the manner provided by law, or the county attorney upon the request of the department, shall institute an action against the forest landowner, in the name of the state, in any district or justice court having jurisdiction, to recover the debt, and the state in the action is not required to pay any fees or costs to the clerk of the court or justice of the peace. The complaint and all subsequent proceedings in the action shall conform as nearly as practicable to that provided by section 84-4302. The remedies provided by this section are cumulative and do not affect the other provisions of this chapter for the payment and collection of amounts due to the department.

**History:** En. Sec. 13, Ch. 128, L. 1939; amd. Sec. 10, Ch. 253, L. 1974.

**Amendments**

The 1974 amendment substituted "de-

partment" for "board" throughout the section; substituted "this chapter" for "this act" in the first and last sentences; and made minor changes in phraseology.

**28-114. Permit for burning required.** During the forest fire season or an expansion thereof a person may not ignite or set a forest fire, slash burning fire, land clearing fire, debris burning fire, or an open fire, within forest lands, without an official written permit to ignite or set the fire from a firewarden or peace officer authorized by the department to issue such permits for forest lands. A permit is not required in order to build,

set or ignite a campfire within and upon a designated improved camping ground, or upon a plot of land from which all vegetable and inflammable matter and debris have been removed to a point where it may not become ignited by the campfire or by sparks therefrom.

History: En. Sec. 14, Ch. 128, L. 1939; amd. Sec. 11, Ch. 253, L. 1974.

partment" for "board" in the first sentence; and made minor changes in phraseology and punctuation.

#### Amendments

The 1974 amendment substituted "de-

**28-116. Penalty for failure to comply with permit.** A person to whom a written permit is issued to set or ignite a fire within forest lands during the forest protection season shall comply strictly with the permit. A person who fails to comply with the permit, leaves the fire unattended, leaves the fire before it is totally extinguished, or negligently allows the fire to spread from or beyond the burning area defined by the permit, is guilty of a misdemeanor. The department shall prescribe the form and substance of such permit.

History: En. Sec. 16, Ch. 128, L. 1939; amd. Sec. 12, Ch. 253, L. 1974.

partment" for "board" in the last sentence; and made minor changes in phraseology and punctuation.

#### Amendments

The 1974 amendment substituted "de-

**28-119. Sawdust piles—restrictions.** (1) Before each forest fire season, all persons, firms or corporations, creating or responsible for mill waste within the forest areas, shall treat, dispose of, remove or reduce the hazards created so that the accumulation of sawmilling waste does not constitute a fire hazard.

(2) A sawmill located within or contiguous to forest lands may not accumulate in one pile, sawdust in excess of an amount resulting from the sawing of five hundred thousand (500,000) feet log scale of sawlogs, however, a larger sawdust pile may be accumulated when there is no reasonable danger of fire therefrom and a permit for the additional accumulation is granted by the department. If burning is the disposal method elected, each sawdust pile so accumulated shall be prepared for burning by cribbing the base of each pile with slabs and burned in accordance with rules adopted by the department.

History: En. Sec. 19, Ch. 128, L. 1939; amd. Sec. 1, Ch. 222, L. 1955; amd. Sec. 1, Ch. 195, L. 1969; amd. Sec. 13, Ch. 253, L. 1974.

in the last sentence of the second paragraph.

The 1974 amendment substituted "department" for "state forester" in the first sentence of subsection (2); substituted "department" for "board of forestry" in the second sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

#### Amendments

The 1969 amendment inserted the first paragraph and inserted "In the event that burning is the disposal method elected,"

**28-121. Disposition of fines collected.** Fines collected in a court of the state under this act shall be transferred to the state treasurer for deposit in the federal and private grant clearance fund. Whenever a person is convicted in any court of a violation of this act, the court may levy and collect as costs in the case the amount necessary to compensate the county for the expenditures made in and for the prosecution

of the offender. These costs when collected shall be deposited by the court, with the proper county treasurer for the benefit of the county.

History: En. Sec. 21, Ch. 128, L. 1939; amd. Sec. 14, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment substituted "in the federal and private grant clearance

fund" in the first sentence for "in, and for the credit of, the foresters' co-operative work fund as hereinafter provided"; and made minor changes in phraseology and punctuation.

**28-122. Department of state lands and county commissioners to co-operate.** The department of state lands and boards of county commissioners may co-operate with the department to the extent legally permissible in providing means and methods of safeguarding the forest land lying within the state and in preventing fire nuisance thereon. The department of state lands and the boards of county commissioners may list forest lands under their jurisdiction with a recognized agency or the department for forest protection. The moneys the state and counties become liable for under this section shall be paid from funds provided by law for the protection of the forest lands owned by the state and counties.

History: En. Sec. 22, Ch. 128, L. 1939; amd. Sec. 15, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment of state lands" for "state board of land commissioners" and "department" for "board"; and made minor changes in phraseology and punctuation.

**28-123. Disposition of moneys.** The following funds may be expended as directed by the department for fire prevention, detection, suppression and for forest range, water, and soil conservation: All moneys collected by county treasurers as assessments on forest lands for forest protection; moneys collected for the abatement of public nuisances; all fines collected for violations of this chapter; the state's share of the co-operative fire protection funds allocated by the federal government; any other funds provided for the purposes herein indicated. All other co-operative funds collected, appropriated or allocated for the use of the department, including funds for the removal of slash hazards resulting from logging or other wood operations on state and private forest lands, those provided for the purpose of helping to maintain the maximum productivity of the forests of the state, those provided for purposes designed to assist the farmers of the state in the establishment of wind-breaks and woodlots in localities where those forest plantings are helpful, and funds for other co-operative work, may not be expended except for the specific purposes for which they were collected, appropriated or allocated.

History: En. Sec. 23, Ch. 128, L. 1939; amd. Sec. 217, Ch. 147, L. 1963; amd. Sec. 2, Ch. 30, L. 1971; amd. Sec. 16, Ch. 253, L. 1974.

#### Amendments

The 1963 amendment deleted a sentence at the beginning of the section which read: "In compliance with section 81-1410, all moneys received from all public agen-

cies, private agencies and individuals co-operating with the state forester or the board of forestry, shall be deposited with the state treasurer and placed to the credit of the foresters' co-operative work fund."

The 1971 amendment added "and forest, forest range, forest water, and forest soil conservation" to the introductory sentence; and made a minor change in punctuation.



The 1974 amendment substituted "department" for "board" in the first sentence; substituted "this chapter" for "this act" in the first sentence; substituted "de-

partment" for "state forester" in the last sentence; and made minor changes in phraseology and punctuation.

**28-124. Disbursement of moneys.** All co-operative moneys collected under section 28-111 and appropriated or allocated for the use of the department and deposited with the state treasurer shall be transferred to the earmarked revenue fund. These moneys may then be paid out after approval and request of the department.

History: En. Sec. 24, Ch. 128, L. 1939; amd. Sec. 218, Ch. 147, L. 1963; amd. Sec. 17, Ch. 253, L. 1974.

#### Amendments

The 1963 amendment divided the former first sentence into two sentences; inserted "under the authority of section 28-111 and" after "collected"; deleted "in the foresters' co-operative work fund" after "state treasurer"; inserted "transferred to the earmarked revenue fund" at the end of the first sentence and "Such moneys may then be" at the beginning of the second sentence; and deleted a former second sentence which read, "The state board of examiners is hereby authorized

to approve for payment (out of any moneys available for purposes designated) all claims properly executed and submitted in the manner provided by law to the person, firm, corporation or public or private agency entitled thereto in compliance with the provisions of this act."

The 1974 amendment substituted "department" for "state forester" in the first sentence and for "board" in the second sentence; deleted "and all vouchers or claims shall be signed on behalf of the said board by the secretary thereof" from the end of the second sentence; and made minor changes in phraseology and punctuation.

**28-125. Ex officio firewardens—powers.** The officers, employees and persons hereinafter designated are hereby declared ex officio firewardens to serve without compensation for the purposes of enforcing the penal provisions of this chapter, enforcing any rule adopted by the board under this chapter, and enforcing any state or federal forest laws: Members of the board, the director of the department and any employee of the department designated by him, officers of organized forest protection districts, members of the Montana highway patrol, all field officers in the United States forest service residing in Montana, game and deputy game wardens, and officers of the national park service and the Indian service situated in Montana. For those purposes set forth above, an ex officio firewarden has all the powers of firewardens under section 81-1413.

History: En. Sec. 25, Ch. 128, L. 1939; amd. Sec. 1, Ch. 276, L. 1971; amd. Sec. 18, Ch. 253, L. 1974.

#### Amendments

The 1971 amendment inserted "enforcing any rule \* \* \* forest laws" in the first sentence; inserted "For those purposes set forth above" in the second sentence; and made a minor change in phraseology.

The 1974 amendment substituted "this chapter" for "this act" in two places; substituted "the director of the department and any employee of the department designated by him" for "the state forester and all regular employees of his office" in the first sentence; substituted "board" for "Montana state board of forestry" in the first sentence; and made minor changes in phraseology and punctuation.

### 28-126. Repealed.

#### Repeal

Section 28-126 (Sec. 26, Ch. 128, L. 1939), relating to powers and duties of

the state forester, was repealed by Sec. 208, Ch. 253, Laws of 1974.

**28-127. Penalty for violation of chapter.** A person who violates this chapter, or any rule adopted by the board or department pursuant to this

chapter, is guilty of a misdemeanor unless otherwise provided by this chapter, and shall be punished by a fine of not more than five hundred dollars (\$500) or imprisonment in a county jail for not more than six (6) months, or both.

History: En. Sec. 27, Ch. 128, L. 1939; amd. Sec. 19, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment substituted "this

chapter" for "this act" throughout the section; inserted "or department" after "adopted by the board"; and made minor changes in phraseology.

**28-129. Owners of forest lands may have hearing before board—conditions.** An owner of forest land within an organized forest fire protection district is entitled to a hearing before the board, after a request therefor on any subject pertaining to the activities of the board or of the department, or any recognized agency as agent of the department, affecting the owner's property. A request for a hearing before the board may not have the effect of suspending the operations of the board or the department, or any agent of the department, undertaken pursuant to this chapter, but, upon the hearing, the board may terminate those operations if found unreasonable. A hearing pertaining to costs charged against the forest land of an owner for protection thereof, as provided in section 28-109, must be requested on or before the fifteenth day of August of each year.

History: En. Sec. 4, Ch. 141, L. 1941; amd. Sec. 20, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment deleted "or the executive committee thereof" after "hearing before the board" in the first sentence; substituted "or of the department, or any recognized agency as agent of the department" in the first sentence for "or

of the state forester as secretary or agent of the board, or any recognized agency as agent of the board"; substituted "operations of the board or the department, or any agent of the department" in the second sentence for "operations of the board, or any such agent of the board"; and made minor changes in phraseology and punctuation.

### 28-130, 28-131. [Transferred.]

#### Compiler's Notes

Sections 21 and 22, Ch. 253, Laws of

1974 renumbered these sections as secs. 28-204 and 28-205.

### 28-132. Repealed.

#### Repeal

Section 28-132 (Sec. 4, Ch. 25, L. 1953), relating to the definition of forest land-

owner, was repealed by Sec. 208, Ch. 253, Laws of 1974.

### 28-133, 28-134. [Transferred.]

#### Compiler's Notes

Sections 23 and 24, Ch. 253, Laws of

1974 renumbered these sections as secs. 28-206 and 28-207.

## CHAPTER 2—FOREST INSECT PESTS AND TREE DISEASES

Section 28-204. Policy for control of forest diseases.

28-205. Definitions.

28-206. Forest infestation—zoning—suppression or eradication.

28-207. Abolition of zone of infestation.

**28-204. Policy for control of forest diseases.** It is the public policy of the state to protect and preserve forest resources from destruction by

forest insect pests and tree diseases, to protect the forests and watersheds of Montana, to enhance the production of forests, to promote the stability of forest industry, to protect the recreational values of the forest, and to independently and through co-operation with the federal government and private forest landowners adopt measures to control, suppress and eradicate outbreaks of forest insect pests and tree diseases.

History: En. Sec. 1, Ch. 25, L. 1953;  
Sec. 28-130, R. C. M. 1947; amd. and  
redes. 28-204 by Sec. 21, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; and made minor changes in phraseology.

### 28-205. Definitions. In this chapter:

(1) "Forest land" means any land which has enough forest growth, standing or down, to constitute, in the judgment of the department, an insect or disease infestation breeding ground of a nature to constitute a menace, injurious and dangerous to the forest resources in the district or zone of infestation.

(2) "Forest landowner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber, other than an easement, right of way, of mineral reservation.

(3) "Department" means the department of natural resources and conservation, provided for in Title 82A, chapter 15.

History: En. Sec. 3, Ch. 25, L. 1953;  
Sec. 28-131, R. C. M. 1947; amd. and  
redes. 28-205 by Sec. 22, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment renumbered this

section; substituted "department" for "state forester and the state board of forestry" in subsection (1); added subsections (2) and (3); and made minor changes in phraseology and style.

**28-206. Forest infestation—zoning—suppression or eradication.** (1) Whenever the department determines that there exists an infestation of forest insect pests or forest tree diseases injurious to the timber or forest growth on forest lands within the state, and that the infestation is of such a character as to be a menace to the timber or forest growth of this state, the department shall, with the approval of the board of natural resources and conservation, declare the existence of a zone of infestation and fix the boundaries so as to definitely describe and identify the zone.

(2) Thereupon, the department may enter upon the land within the zone of infestation and cause the forest insect pest infestation or forest tree disease to be suppressed, eradicated and destroyed in the manner approved by it. In order to accomplish the suppression, eradication and destruction of the infestation, the department may enter into co-operative agreements with the federal government or other public or private agencies, and with forest landowners, using such funds as are made available for those purposes.

History: En. Sec. 5, Ch. 25, L. 1953;  
Sec. 28-133, R. C. M. 1947; amd. and  
redes. 28-206 by Sec. 23, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; substituted "department" for

"state forester" throughout the section; substituted "board of natural resources and conservation" for "state board of forestry" in subsection (1); deleted "written" before "approval" in subsection (1); and made minor changes in phraseology, punctuation and style.



**28-207. Abolition of zone of infestation.** When the department determines that forest insect or disease control work within the designated zone of infestation is no longer necessary or feasible, it shall abolish the zone of infestation.

History: En. Sec. 6, Ch. 25, L. 1953;  
Sec. 28-134, R. C. M. 1947; amd. and  
redes. 28-207 by Sec. 24, Ch. 253, L. 1974.

**Amendments**

The 1974 amendment renumbered this section; substituted "department" for "state forester"; and made minor changes in phraseology.

**CHAPTER 3—FOREST AND CONSERVATION EXPERIMENT STATION**

Section 28-301. Montana forest and conservation experiment station established.

28-303. Purposes of station.

28-304. Reports—disposition of income.

**28-301. Montana forest and conservation experiment station established.** There is hereby established in the university of Montana forestry school, a station to be known as the Montana forest and conservation experiment station, which shall be under the direction of the state board of education.

History: En. Sec. 1, Ch. 141, L. 1937;  
amd. Sec. 25, Ch. 253, L. 1974.

versity of Montana forestry school" for  
"Montana state university, forestry  
school."

**Amendments**

The 1974 amendment substituted "uni-

**28-303. Purposes of station.** It is the purpose of this station:

(1) To study the forest and forest land resources of the state to the end that the state and its citizens may attain the highest economic and social benefits from the forest soils within the state and the influences and products flowing therefrom.

(2) To study the growth and the utilization of timber with special reference to their improvement and the widening of the markets available to the state.

(3) To determine the relationship between the forest and water conservation and waterflow regulation; the forest and pasturage for domestic livestock and wildlife; the forest and recreation and those other direct and indirect benefits that may be secured by the maintenance of or the establishment of forests or woodlands.

(4) To study and develop the establishment of windbreaks, shelter belts and woodlots on the farms of the state that moisture may be conserved thereby for the best production of agricultural crops and forage; for the prevention of soil wastage and erosion; to make the farm home more comfortable and to produce forest material for the use of the farmer and the stockman.

(5) To study the findings of other agencies that the information thus obtained may be used to improve the growth, management and utilization of the timber within the state and to protect it against damage by fire, insects, disease and other harmful agencies.

(6) To collect, to compile and to publish statistics relative to Montana forests and forestry and the influences flowing therefrom; to prepare and publish bulletins and reports, with the necessary illustrations and maps that the information collected by the station in forestry and in conservation may be made available for use and to distribute this information or material in such other ways as the state board of education may direct.

(7) To collect a library and bibliography of literature pertaining to or useful for the purpose of this act.

(8) To study logging, lumbering and milling operations and other operations dealing with the products of forest soils with special reference to their improvement; to investigate, and make tests of forest products produced or that may be produced within the state that markets may be improved thereby.

(9) To consider such other scientific and economic problems as, in the judgment of the state board of education, are of value to the people of the state.

(10) To co-operate with the other departments of the university of Montana, the departments of the state government when mutually beneficial, and with private individuals and agencies; and to co-operate with the United States government and its branches as a land grant institution, or otherwise, in accordance with their regulations.

(11) To establish such field experiment stations as in the judgment of the state board of education may be necessary. The state board of education may accept, for and in behalf of the state of Montana, such gifts of land or other donations as may be made to the state for the purposes of this act.

History: En. Sec. 3, Ch. 141, L. 1937; amd. Sec. 26, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment substituted "the departments of the state government" in subdivision (10) for "the state forester

and the state board of land commissioners, the state fish and game commission, the state livestock commission and with other departments and branches of the state government"; and made minor changes in phraseology and style.

**28-304. Reports—disposition of income.** The state board of education may require such regular and special reports to be prepared as it deems necessary. Such regular reports and the special reports and bulletins, with proper illustrations and maps, shall be printed and distributed as the state board of education may direct, and as the interests of the state and of science and industry may demand.

Income received by the station shall be deposited in the state treasury and used for the purposes of administering this act.

History: En. Sec. 4, Ch. 141, L. 1937; amd. Sec. 234, Ch. 147, L. 1963.

#### Amendment

The 1963 amendment added the second paragraph.

#### Cross-References

Board of regents to exercise powers and duties of state board of education, sec. 75-5617 (2).

## CHAPTER 4—DISPOSAL OF SLASHINGS AND FOREST DEBRIS

- Section 28-404. Reduction or management of fire hazard created by cutting timber.  
 28-405. Reduction of slash and forest debris along right of way.  
 28-406. Purchaser will ensure compliance, prior to purchase, will transmit withheld money to department—penalty.  
 28-407. Disposal of slash—injunction against further cutting—disposal at expense of owner—lien and enforcement—orders.  
 28-408. Supervision by department.  
 28-410. Contracts with owners of forest lands.  
 28-411. Methods of reducing hazards—contracts with forest protective agencies.  
 28-412. Certificate of clearance.

**28-401 to 28-403. (2778.5 to 2778.7) Repealed.****Repeal**

Sections 28-401 to 28-403 (Secs. 5 to 7, Ch. 95, L. 1927; Sec. 1, Ch. 81, L. 1931; Secs. 1, 2, Ch. 34, L. 1941; Secs. 1, 2, Ch. 83, L. 1949; Sec. 1, Ch. 18, L. 1953; Sec. 1,

Ch. 230, L. 1955), relating to burning of forest debris and disposal of slashings, were repealed by Sec. 4, Ch. 147, Laws 1971.

**28-404. Reduction or management of fire hazard created by cutting timber.** Everyone engaged, or about to engage, in the cutting of any forest product or conducting standing improvement such as, but not limited to, thinning, weeding and pruning, upon private lands within the state of Montana shall provide for the reduction or management of the fire hazard to the property of others thus created or to be created by entering into a fire hazard reduction agreement as provided in sections 28-408 to 28-412, or by posting a bond to the state of Montana in such form and for such amount as may be prescribed by the department of natural resources and conservation; provided, however, that the amount of the bond so prescribed shall not be in excess of the amount which such person would be required to pay under said sections 28-408 to 28-412, and that the bond shall be conditioned upon full and faithful compliance with all requirements under said sections 28-408 to 28-412, and the faithful reduction or management of such fire hazards in the manner prescribed by law. Such bond shall be released upon completion of the work in compliance with the terms of the bond. The department shall issue a certificate of compliance with the terms of this section to all persons who have complied therewith.

**History:** En. Sec. 1, Ch. 207, L. 1959; and Sec. 27, Ch. 253, L. 1974.

**Amendments**

The 1974 amendment substituted "de-

partment of natural resources and conservation" in the first sentence for "state forester" and "department" in the last sentence for "state forester."

**28-405. Reduction of slash and forest debris along right of way.** Everyone clearing right of way for any railroad, public highway, public trail, private road, trail, ditch, dyke, pipeline or wire lines, or any other transmission or transportation utility right of way, except temporary roads located within the boundaries of the cutting area and which are used in the actual logging operations, shall reduce the hazard resulting from such clearing or from the cutting of material for the construction of such public or private utility unless exempted by the department.



Hazard reduction, including burning where this method of disposal is used, shall be done as rapidly as cutting or clearing progresses; provided that upon application to the department he may grant a permit extending the time within which such burning must be done in compliance with all the provisions of this chapter relating to burning permits during the closed season.

The provisions of the section shall apply to all clearing of rights of way across private land and on behalf of the state, county, highway districts and road districts, whether the work be done by day labor, or by contract, and unless unavoidable emergency prevents, provision shall be made by the proper officials conducting, directing, or letting said work for withholding until it is complete, a sufficient portion of the payment therefor to assure compliance with this act.

Violations of any of the provisions of this section shall be deemed a misdemeanor and be punishable by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

In addition to the penalty herein provided the offender may be enjoined, at the instance of the department from proceeding with such work until the provisions of this section shall have been complied with; and, upon application of the department to any court of competent jurisdiction, a writ of mandate shall issue compelling the offender to fully comply with the provisions thereof.

History: En. Sec. 2, Ch. 207, L. 1959; amd. Sec. 28, Ch. 253, L. 1974.

partment" for "state forester" in the first, second and last paragraphs; and made minor changes in style.

#### Amendments

The 1974 amendment substituted "de-

28-406. Purchaser will ensure compliance, prior to purchase, will transmit withheld money to department—penalty. The initial purchaser of forest products which have been cut or are about to be cut from any private lands within the state of Montana, shall before making such purchase or contract to purchase determine that the persons, firm or corporation engaged, or about to engage, in the cutting of these forest products, has provided for the reduction or management of the fire hazard thus created, as provided in sections 28-404 to 28-412. When the hazard reduction agreement provides that the purchaser of forest products shall withhold moneys to ensure faithful compliance with sections 28-404 to 28-412, said purchaser will transmit any moneys which are withheld to the [department].

Violation of any of the provisions of this section shall be deemed a misdemeanor and be punishable by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

History: En. Sec. 3, Ch. 207, L. 1959; amd. Sec. 29, Ch. 253, L. 1974.

paragraph for "state forester" to correct an apparent error.

#### Compiler's Notes

The bracketed word "department" has been inserted by the compiler in the first

#### Amendments

The 1974 amendment substituted "department" for "state forester" in the caption; and made minor changes in style.

28-407. Disposal of slash—injunction against further cutting—disposal at expense of owner—lien and enforcement—orders. In the event one responsible therefor shall fail, refuse or neglect to properly dispose of slash in accordance with the requirements of sections 28-404 and 28-406, and such person responsible therefor is engaged or is about to engage, either for himself or for another, in cutting timber or other forest products, and thereby creating a fire hazard anywhere within the state, he may be enjoined from cutting such timber and thereby creating a fire hazard until he shall have complied with the provisions of sections 28-404 and 28-406. Such injunction proceedings may be instituted by the department as plaintiff and the court may in its discretion grant a temporary injunction. In any such proceedings no bond shall be required of the plaintiff and such proceedings shall be handled with expedition in the district court of the county where the land is located.

If one responsible therefor has for any reason failed to comply with sections 28-404 and 28-406, and has without such compliance cut any forest products and shall fail, refuse, or neglect to obtain compliance for a period of thirty (30) days after being notified so to do by the department, the department, may, if it deems it advisable, complete, direct or authorize the disposal of such slash at the expense of the owner of the timber or other forest products cut or produced from the land upon which such fire hazard remains undisposed of as aforesaid.

The cost and expense of such disposal, plus twenty per cent (20%) of the cost and expense of such disposal as a penalty, shall constitute a lien upon the forest products so cut or produced from such land. If payment of the sum demanded be not made to the department within ten (10) days of such written demand, the department must transfer all papers relative to the unsatisfied demand for payment to the attorney general of the state, who shall bring legal action on behalf of the state to recover the debt.

The department shall not file for record any lien against the property of any person who has been issued a certificate of compliance with sections 28-404 and 28-406, covering such property.

All orders and directions issued by the department as required by this section and section 28-404 shall be in writing and made in duplicate, the original of which shall be sent or delivered to the person to receive such orders, permits or directions; one copy shall be filed in the office of the department.

History: En. Sec. 4, Ch. 207, L. 1959; partment" for "state forester" throughout  
amd. Sec. 30, Ch. 253, L. 1974. the section; and made minor changes in  
phraseology and style.

#### Amendments

The 1974 amendment substituted "de-

28-408. Supervision by department. (1) The department, under such rules as the board of natural resources and conservation may provide, shall supervise the reduction or management of any fire hazard to the property of others created by the cutting of any forest product on private land in the state of Montana.

(2) The reduction or management of fire hazards referred to in this act shall be in keeping with modern and progressive forest practices and more effective fire control and may include or be limited to the taking of protective measures to prevent injury or the destruction of forest resources without actual abatement of the hazard.

**History:** En. Sec. 5, Ch. 207, L. 1959; amd. Sec. 1, Ch. 147, L. 1971; amd. Sec. 31, Ch. 253, L. 1974.

#### **Amendments**

The 1971 amendment inserted "shall be in keeping with modern and progressive

forest practices and more effective fire control and" in the second paragraph.

The 1974 amendment substituted "department" for "state forester" and "board of natural resources and conservation" for "state board of forestry" in subsection (1); and made minor changes in style.

### **28-409. Repealed.**

#### **Repeal**

Section 28-409 (Sec. 6, Ch. 207, L. 1959), relating to delegation of powers by

state forester to state firewardens, was repealed by Sec. 208, Ch. 253, Laws of 1974.

**28-410. Contracts with owners of forest lands.** The department is hereby authorized and empowered to enter into agreements with the owners of any forest lands or any operator engaged in operations on lands within the state of Montana whereby slash is created, and under said contract the department may assume all responsibility for the reduction or management of any fire hazard; any such contract shall provide the amount to be paid by the owner or operator to the department by reason of its agreement to assume the reduction or management, of such fire hazard. Said amount shall not exceed two dollars (\$2) for each one thousand (1000) feet log scale, or the equivalent thereof if forest products other than logs are cut.

**History:** En. Sec. 7, Ch. 207, L. 1959; amd. Sec. 2, Ch. 147, L. 1971; amd. Sec. 32, Ch. 253, L. 1974.

#### **Amendments**

The 1971 amendment increased the amount specified in the final sentence from

one dollar to two dollars for each one thousand feet.

The 1974 amendment substituted "department" for "state forester" in two places; and made minor changes in phraseology and style.

**28-411. Methods of reducing hazards—contracts with forest protective agencies.** The reduction or management of such fire hazards shall be carried on by the department and the state firewardens in keeping with modern and progressive forest practices and more effective fire control and the department is hereby authorized to enter into contracts with forest protective agencies, including agencies of the United States of America, for the reduction or management of such fire hazards when in its opinion the work can best be accomplished in that manner. The department, state firewardens, and recognized forest protective agencies, including any agency of the United States of America, with which the department has entered into an agreement for the reduction or management of any fire hazard as herein provided, and any officer or official of such agency, shall not be liable for any damage to the land, product, improvement, or other things of value of whatsoever nature upon the lands on which the fire hazards are being managed or reduced in accordance with provisions of



sections 28-408 to 28-412, when all requisite care and caution has been used and such work is being or has been performed in compliance with the rules provided in section 28-408.

**History:** En. Sec. 8, Ch. 207, L. 1959; amd. Sec. 33, Ch. 253, L. 1974.

#### Amendments

The 1971 amendment changed the proviso so as to make the cash bond discretionary with the state forester rather than mandatory.

The 1974 amendment substituted "department" for "state forester" throughout the section.

#### Repealing Clause

Section 4 of Ch. 147, Laws 1971 read "Sections 28-401 through 28-403, R. C. M., 1947, are repealed."

**28-412. Certificate of clearance.** Any owner or operator who has entered into a contract with the department for the reduction or management of any fire hazard and upon payment of the contract price in accordance with the terms of said contract and the full compliance with the terms of said contract by such owner or operator, shall be granted a certificate of clearance and be relieved of any and all further liability and responsibility for the removal or reduction of any such fire hazard; provided, however, the department may require a cash bond, equivalent to the contract price, and conditioned upon the faithful performance of said contract, be deposited by the owner or operator with the department.

**History:** En. Sec. 9, Ch. 207, L. 1959; amd. Sec. 3, Ch. 147, L. 1971; amd. Sec. 34, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for state forester" throughout the section.

## CHAPTER 6—PROTECTION AND CONSERVATION OF FOREST AND FARM RESOURCES BY COUNTY COMMISSIONERS

Section 28-602. Functions of the board.

28-603. Powers of board.

28-604. Lands to which applicable.

### 28-601. Authority of county commissioners to protect range, etc.

#### References

*Stocking v. Johnson Flying Service*, 143 M 61, 387 P 2d 312.

**28-602. Functions of the board.** The functions of the respective boards of county commissioners with respect to rural fire control shall be to carry out the specific authorities and duties hereinafter imposed.

(1). \* \* \* [Same as parent volume.]

(2) To appoint a county rural fire chief and such district rural fire chiefs, subject to the direction and supervision of the county rural fire chief, as they may deem necessary. The county rural fire chief may be a regular county officer or other person, who in the opinion of the board is the best qualified to perform the duties of this office and who shall serve without additional compensation for the duties hereby imposed. All district fire chiefs shall serve without compensation;

(3). \* \* \* [Same as parent volume.]

**History:** En. Sec. 2, Ch. 173, L. 1945; amd. Sec. 1, Ch. 229, L. 1973.

#### Amendments

The 1973 amendment substituted "may" for "shall" following "fire chief" near the

beginning of the second sentence in subdivision (2); and inserted "or other person," following "regular county officer" in the second sentence of subdivision (2).

**28-603. Powers of board.** (1) to (4) \* \* \* [Same as parent volume.]

(5) The board is authorized to appropriate from the general fund of the county not to exceed fifteen thousand dollars (\$15,000) per year for the purchase, care and maintenance of fire-fighting equipment, or for the payment of wages to skilled operators of heavy mechanized equipment in the suppression of fires when deemed necessary; or if the general fund is budgeted to the full limit, the board may at any time fixed by law for levy and assessment of taxes levy a tax at such rate as in their judgment will be necessary to raise such needed sum not to exceed fifteen thousand dollars (\$15,000).

**History:** En. Sec. 3, Ch. 173, L. 1945; amd. Sec. 1, Ch. 40, L. 1955; amd. Sec. 1, Ch. 337, L. 1971. maximum appropriation and levy under subsection (5) from \$5,000 to \$15,000.

#### References

Stocking v. Johnson Flying Service, 143 M 61, 387 P 2d 312.

#### Amendments

The 1971 amendment increased the

**28-604. Lands to which applicable.** The provisions of this act are not applicable to any organized forest protection district or fire district defined in sections 28-101 to 28-129, or sections 11-2003 through 11-2010, or any organized fire protection district organized and operating under other legal authority. This act shall apply to all lands not protected by federal, state, municipal or private protective agencies organized under the laws of the state of Montana.

**History:** En. Sec. 4, Ch. 173, L. 1945; amd. Sec. 2, Ch. 229, L. 1973.

#### Amendments

The 1973 amendment inserted "or sections 11-2003 through 11-2010" in the first sentence.

#### Effective Date

Section 3 of Ch. 229, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

## CHAPTER 7—TRANSPORTATION OF CONIFEROUS TREES

**Section 28-701.** Bill of sale required for transportation of coniferous trees on highway.

**28-701. Bill of sale required for transportation of coniferous trees on highway.** (1) It shall be unlawful and constitute a misdemeanor for any person to transport on the highways of this state, more than ten (10) coniferous trees without having in his possession a bill of sale showing his title for the trees. The bill of sale shall specify:

- (a) the date of its execution;
- (b) the name and address of the vendor or donor of the trees;
- (c) the name and address of the vendee or donee of the trees;
- (d) the number of trees, by species, sold or transferred by the bill of sale; and
- (e) the shipping yards or the property from which the trees were taken.

- (2) The foregoing provisions do not apply to:
- (a) the transportation of trees with their roots intact;
  - (b) the transportation of logs, poles, pilings or other forest products from which substantially all the limbs and branches have been removed;
  - (c) the transportation of coniferous trees by the owner of the land from which they were taken or his agents;
  - (d) the transportation of coniferous trees by a common carrier.

**History:** En. Sec. 1, Ch. 137, L. 1967.

**Title of Act**

An act declaring it unlawful to transport on the highways of this state more

than ten (10) coniferous trees, unless the transporter has a bill of sale in his possession showing his title for the trees and providing a penalty for violation of this act.

CHAPTER 8—PORTABLE SAWMILLS ON FOREST LAND—  
LICENSE AND REGULATION

Section 28-801. Definitions.

28-802. Portable sawmill license required.

28-803. Application for license—fee.

28-804. Issuance of license—term.

28-805. Revocation of license for violation of law.

28-806. Penalty for violations.

28-801. Definitions. Unless the context requires otherwise, in this chapter:

(1) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(2) "Portable sawmill" means a sawmill located upon forest land within the state and having a rated capacity of less than five thousand (5,000) feet per hour of operation.

**History:** En. 28-801 by Sec. 106, Ch. 253, L. 1974.

28-802. Portable sawmill license required. It is unlawful to operate a portable sawmill located upon forest lands within the state without first obtaining a license therefor from the department.

**History:** En. Sec. 1, Ch. 124, L. 1931; Sec. 81-1501, R. C. M. 1947; amd. and redes. 28-802 by Sec. 107, Ch. 253, L. 1974.

**Amendments**

The 1974 amendment renumbered this section; substituted "department" for "forester of the state of Montana"; and made minor changes in phraseology.

28-803. Application for license—fee. Whenever a person, firm or corporation desires to commence the operation of a portable sawmill located or to be located upon forest lands within the state, that person, firm or corporation shall apply to the department in writing for a license to operate the portable sawmill. The application shall include the name of the person, firm or corporation contemplating the operation of the sawmill, the location thereof by section, township and range numbers, the rated capacity of the sawmill and the approximate amount of stumpage to be cut at the proposed setting and the approximate date desired for the commencement of the operation. The application shall be accompanied by the payment of a fee of two dollars (\$2.00), which is fixed as the license



fee for the operation of any portable sawmill, to be credited to the federal and private grant clearance fund.

**History:** En. Sec. 2, Ch. 12, L. 1931; amd. Sec. 2, Ch. 248, L. 1965; Sec. 81-1502, R. C. M. 1947; amd. and redes. 28-803 by Sec. 108, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; substituted "department" in the first sentence for "state forester of the

state of Montana"; substituted "include" at the beginning of the second sentence for "disclose to the state forester"; substituted "federal and private grant clearance fund" at the end of the section for "earmarked revenue fund, co-operative forest management account"; and made minor changes in phraseology.

**28-804. Issuance of license—term.** Upon receipt of the application and the payment of the fee the department shall issue a license to the person, firm or corporation applying therefor. The license shall be upon a form provided by the department and shall cover such period as the sawmill remains in continuous operation on a single setting or location, or until revocation by the department.

**History:** En. Sec. 3, Ch. 124, L. 1931; Sec. 81-1503, R. C. M. 1947; amd. and redes. 28-804 by Sec. 109, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment renumbered

this section; substituted "department" throughout the section for "state forester"; and made minor changes in punctuation and phraseology.

**28-805. Revocation of license for violation of law.** Whenever it appears that there is a violation of any law of the state enacted for the protection of forest and forest lands in connection with the operation of a portable sawmill or in the protection of the lands from which the timber sawed or to be sawed at a mill is cut, the department may revoke the license and thereby suspend the operation of a sawmill until the conditions constituting a violation of law are remedied and removed.

**History:** En. Sec. 4, Ch. 124, L. 1931; Sec. 81-1504, R. C. M. 1947; amd. and redes. 28-805 by Sec. 110, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; substituted "department" for "state forester"; and made minor changes in phraseology.

**28-806. Penalty for violations.** A person, firm or corporation violating this act is guilty of a misdemeanor and shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500), which fines are to be credited to the general school funds of the state; this act shall not be construed to in any manner affect the civil liability of any person in connection with the origin or spread of fire in the forest lands of the state.

**History:** En. Sec. 6, Ch. 124, L. 1931; Sec. 81-1506, R. C. M. 1947; amd. and redes. 28-806 by Sec. 111, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; and made minor changes in punctuation and phraseology.

## TITLE 29—FRAUDULENT CONVEYANCES

### CHAPTER 1—UNIFORM FRAUDULENT CONVEYANCE ACT

#### 29-101. Definition of terms.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have

adopted the Uniform Fraudulent Conveyance Act: Idaho, New Mexico, Ohio, Oklahoma, and Virgin Islands.

#### 29-104. Conveyances by insolvent.

##### Insolvency as Matter of Law

Debtor was insolvent as a matter of law at time he conveyed his ranch property to his children where his total liabilities exceeded his total assets by over \$7,000, including in that computation an

\$11,000 debt to the Federal Land Bank on which debtor remained principal debtor despite a purported assumption of the obligation by his son. *Baker Nat. Bank v. Lestar*, 153 M 45, 453 P 2d 774.

#### 29-105. Conveyances by persons in business.

##### Joinder of Actions

A creditor may join with his cause of action alleging indebtedness a second cause of action alleging that debtor's giving of mortgages and conveyance of certain property was without fair considera-

tion and made him insolvent, and a third cause of action alleging that after executing the mortgages, he had unreasonably small capital in his business. *Cahill-Mooney Constr. Co. v. Ayres*, 140 M 464, 373 P 2d 703, 709.

#### 29-109. Rights of creditors whose claims have matured.

##### Money Judgment

The right to seek a money judgment is merely collateral to the primary right to

set aside the conveyance. *Cahill-Mooney Constr. Co. v. Ayres*, 140 M 464, 373 P 2d 703, 705.

### CHAPTER 2—CERTAIN INSTRUMENTS AND TRANSFERS, WHEN VOID

#### 29-206. (6944) Other provisions.

##### Compiler's Notes

Sections 18-201 to 18-205, referred to in this section in the parent volume, were

repealed by Sec. 10-102, Ch. 264, Laws 1963.

#### 29-210. (8606) Question of fraud—how determined.

##### Sufficiency of Evidence

Finding of district court that transferor of property had no intent to defraud creditors was supported by substantial evidence of: a substantial cash payment to transferor; application of entire proceeds to transferor's debts; lack of secrecy in transaction; application of wife's interest in part of property transferred to hus-

band's debts; sale of fractional interest in mother's estate to brother also holding fractional interest therein, who presumably would be willing to pay more than stranger; and apparent existence of sufficient remaining assets with which to discharge transferor's remaining indebtedness. *White v. Nollmeyer*, 151 M 387, 443 P 2d 873.





## TITLE 30—GUARANTY, INDEMNITY AND SURETYSHIP

Chapter 6. Letters of credit, Repealed—Section 10-102, Chapter 264, Laws of 1963.

### CHAPTER 2—GUARANTORS—LIABILITY AND EXONERATION

30-208. (8188) What dealings with debtor exonerate guarantor.

#### Alteration of Remedies or Rights of Creditor

An alteration or elimination of debtor's remedy did not result in exoneration of the guarantor; elimination of right of redemption of debtor corporations which owned real property subject to security interest by secured party's action in forcing transfer of pledged stock certificates did not exonerate guarantor. *Stensvad v. Miners and Merchants Bank of Roundup*, — M —, 517 P 2d 715.

#### Execution and Delivery of Note as Evidence

Debtor's execution and delivery to creditor of note as evidence of debt rather than as payment thereof did not exonerate debtor's surety in the absence of prejudice

to the surety. *Falls Implement Co. v. General Ins. Co. of America*, 152 M 250, 448 P 2d 675.

#### Rescission of Contract by Creditor

Where vendees of real estate abandoned premises with the knowledge of vendors, who repossessed by permitting another party to occupy and served a notice of cancellation of the contract for sale upon vendees, vendors, by such rescission of contract, lost their right to bring action against vendees' guarantor for unpaid purchase price. *Scott v. Kyhl*, 141 M 523, 379 P 2d 803.

#### References

*United States v. Helena Office Supply Co.*, 256 F Supp 53, 54.

### CHAPTER 3—INDEMNITY

30-301. (8163) Indemnity defined.

#### References

*Western Constr. Equipment Co. v. Mosby's, Inc.*, 146 M 313, 406 P 2d 165.

30-307. (8169) Rules for interpreting agreement of indemnity.

#### References

*Western Constr. Equipment Co. v. Mosby's, Inc.*, 146 M 313, 406 P 2d 165.

30-308. (8170) When person indemnifying is a surety.

#### References

*Western Constr. Equipment Co. v. Mosby's, Inc.*, 146 M 313, 406 P 2d 165.

### CHAPTER 4—SURETYSHIP—SURETIES AND THEIR LIABILITY

30-407. (8201) Surety discharged by certain acts of the creditor.

#### Impairment of Remedies or Rights

Under subdivisions 1 and 2 of this section a surety is discharged when his remedies or rights are impaired by an act of the creditor. *United States v. Helena Office Supply Co.*, 256 F Supp 53, 54.

#### Prejudice of Surety Required for Release

Subdivision 3 of this section and section 30-502 relieve a surety in cases of omission or neglect, but only after a request by the surety that the creditor proceed. *United States v. Helena Office Supply Co.*, 256 F Supp 53, 54.

**Rescission of Contract by Creditor**

Where vendees of real estate abandoned premises with the knowledge of vendors, who repossessed by permitting another party to occupy and served a notice of cancellation of the contract for sale upon

vendees, vendor, by such rescission of contract, lost their right to bring action against vendees' guarantor for unpaid purchase price. *Scott v. Kyhl*, 141 M 523, 379 P 2d 803.

CHAPTER 5—RIGHTS OF SURETIES AND CREDITORS

30-502. (8203) Surety may require the creditor to proceed, etc.

**Prejudice of Surety Required for Release**

Subdivision 3 of section 30-407 and this section relieve a surety in cases of omis-

sion or neglect, but only after a request by the surety that the creditor proceed. *United States v. Helena Office Supply Co.*, 256 F Supp 53, 54.

CHAPTER 6—LETTERS OF CREDIT

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

30-601 to 30-609. (8210 to 8218) Repealed.

**Repeal**

These sections (Secs. 3710 to 3718, Civ. C. 1895; Secs. 5695 to 5703, Rev. C. 1907; Secs. 8210 to 8218, R. C. M. 1921), relat-

ing to letters of credit, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

## TITLE 31—HIGHWAY PATROL

- Chapter 1. Montana highway patrol—creation—powers and duties, 31-103 to 31-105.1, 31-110, 31-114, 31-117, 31-119, 31-123, 31-126 to 31-130, 31-135, 31-138, 31-142, 31-145 to 31-147, 31-149, 31-163 to 31-190.
2. Highway patrolmen's retirement system, 31-201, 31-205 to 31-207, 31-209 to 31-211, 31-213, 31-222 to 31-224, 31-228, 31-230, 31-231.

### CHAPTER 1—MONTANA HIGHWAY PATROL—CREATION— POWERS AND DUTIES

- Section 31-103. Organization—rules and regulations.
- 31-104. Chief—appointment—tenure of office—salary—supervisory power—resident requirement.
- 31-105. Appointment and promotion of officers—replacements and additions—reserve patrolmen—salaries—qualifications—probationary training—tenure—disciplinary action—hearing—appeal.
- 31-105.1. Salaries paid out of earmarked revenue fund.
- 31-110. Offenses for which arrest may be made by patrolmen—murder, etc.—patrolmen when police officers—forbidden to act in labor disputes—temporary control of traffic in cities and towns—investigations of accidents—inspection of livestock.
- 31-114. Highway patrol—fees—fines and forfeitures.
- 31-117. Drivers' examination section of highway patrol.
- 31-119. Vehicle—motor vehicle—farm tractor—school bus—bus—motorcycle.
- 31-123. Chief—board.
- 31-126. What persons are exempt from license.
- 31-127. What persons shall not be licensed.
- 31-128. Classification of chauffeurs—special restrictions.
- 31-129. Instruction and traffic education permits and temporary licenses.
- 31-130. Application for license, instruction permit or motorcycle endorsement.
- 31-135. Licenses issued to operators and chauffeurs—renewals and expiration thereof.
- 31-138. Duplicate certificates.
- 31-142. Authority of board to cancel licenses.
- 31-145. When court to forward license to board and report convictions.
- 31-146. Mandatory revocation of license by board or chief upon proper authority.
- 31-147. Authority of board to suspend license or driving privilege or issue probationary license.
- 31-149. Period of suspension or revocation.
- 31-163. Driver license compact enacted—text.
- 31-164. Highway patrol board as licensing authority—information and documents furnished.
- 31-165. Reimbursement of compact administrator.
- 31-166. Governor as executive head.
- 31-167. Report to highway patrol board of suspension or revocation of licenses.
- 31-168. Offenses furnishing ground for suspension or revocation of license.
- 31-169. Review of administrative actions.
- 31-170. Authority of board to issue identification cards.
- 31-171. Rules and regulations for identification cards.
- 31-172. Immunity of public entities for inaccurate identification cards.
- 31-173. Agents for issuance of identification cards.
- 31-174. Fees for identification cards.
- 31-175. Purpose.
- 31-176. Legislative intent.
- 31-177. Definitions.
- 31-178. Administrator's duties.
- 31-179. County attorney to file verified complaint.
- 31-180. Notification of attorney general—his duties.
- 31-181. Abstracts admissible as evidence.



- 31-182. Court to issue show cause order.
- 31-183. Service of process.
- 31-184. Court hearing.
- 31-185. Penalties.
- 31-186. Unlawful for habitual traffic offender to operate motor vehicle.
- 31-187. Habitual traffic offender operating motor vehicle guilty of misdemeanor.
- 31-188. When defendant certified for trial.
- 31-189. Construction.
- 31-190. Severability.

### 31-102. Board defined—chairman.

#### Cross-References

Board abolished and functions transferred, sec. 82A-1205(2).

**31-103. Organization—rules and regulations.** The Montana highway patrol board shall maintain a permanent place of business at the state capital and shall meet at least once each month for the purpose of transacting its business and it may make, promulgate and amend rules and regulations which prescribe procedures and practice requirements of the Montana highway patrol. The Montana highway patrol shall provide for clerical help, provide for the maintenance of the patrol and for the employment and supervision of the patrol in conformity with the provisions of this act. The Montana highway patrol shall furnish the governor of the state of Montana with automobile transportation upon his request, provided that such transportation shall be limited to travel and transportation of the governor while on official business of the state of Montana.

**History:** En. Sec. 3, Ch. 199, L. 1943; amd. Sec. 1, Ch. 55, L. 1945; amd. Sec. 1, Ch. 245, L. 1971.

#### Amendments

The 1971 amendment added to the end of the first sentence the clause authorizing rules and regulations.

#### Effective Date

Section 2 of Ch. 245, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

**31-104. Chief—appointment—tenure of office—salary—supervisory power—resident requirement.** The board shall select a highway patrol chief who shall have the rank of colonel and shall hold his office until his appointment has terminated for cause, as hereinafter set forth, and shall receive a salary fixed by the board with approval of the board of examiners within the limits of the legislative appropriation for such purpose, and necessary traveling expenses. The chief shall have direct control and supervision of all patrolmen, subject to the approval of the Montana highway patrol board. The person named as chief shall have been a continuous resident of Montana for at least five (5) years. The chief, with the approval of the board and within the limits of any appropriation made available for such purposes, shall:

1. Designate the authority and responsibility in each such rank, grade and position;
2. Formulate standards, policies and qualifications in the selection of recruit patrolmen;
3. Prescribe the official uniform of the Montana highway patrol;
4. Station employees in such localities as he shall deem advisable for the enforcement of the traffic laws of this state;

5. Charge against each employee the value of property of the state, lost or destroyed through the carelessness or neglect of such employee;

6. Discharge, demote, or temporarily suspend after hearing as provided in section 31-105, any patrolman of the department;

7. Have purchased, or otherwise acquired, by the purchasing department of the state, motor equipment and all other equipment and commodities deemed by him essential to the efficient operation of the Montana highway patrol.

**History:** En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967.

#### Amendments

The 1967 amendment substituted "chief" for "supervisor" wherever it appears in the first paragraph; inserted "have the rank of colonel and shall" after "who shall"; substituted "fixed by the board with approval of the board of examiners within the limits of the legislative appropriation for such purpose"

for "of seven thousand dollars (\$7,000.00) per annum" after "shall receive a salary"; deleted "for such Montana highway patrol" at the end of the first paragraph; and substituted "patrolman" for "employee" in subparagraph 6.

#### Cross-References

Attorney general to select patrol chief, sec. 82A-1205(2).

Functions of patrol and chief transferred, sec. 82A-1206.

**31-105. Appointment and promotion of officers — replacements and additions — reserve patrolmen — salaries — qualifications — probationary training — tenure — disciplinary action — hearing — appeal.** (1) Appointments and promotions. (a) The board shall designate captains, lieutenants, sergeants, and patrolmen in such numbers as the board may deem necessary, but within the limits of the legislative appropriation made available for such purposes.

(b) Replacements and additions to the highway patrol force shall be chosen in equal numbers from the twelve (12) highway districts, provided however, that if sufficient qualified applications are not received from any one district that the board may in its discretion substitute other qualified applicants from any other districts.

(c) Patrolmen filling vacancies caused by the incumbents' entrance into the armed forces of the United States, shall on the return of the incumbents be placed in the patrol reserve, without pay; otherwise they shall hold their probationary or permanent appointments while there are sufficient operating funds. Reserve patrolmen shall then be used for future replacements in the permanent patrol.

(d) Captains, lieutenants and sergeants shall be selected from the patrolmen by the chief, subject to the approval of the highway patrol board. The duties and jurisdiction of the captains, lieutenants and sergeants shall be outlined, defined and under the control of the chief subject to the approval of the Montana highway patrol board.

(2) Salaries. (a) The Montana highway patrol board shall, within the limits of appropriations made available for such purpose, prepare a schedule of compensation and expenses which shall be uniform within all grades and submit it to the state board of examiners for their approval.

(b) The base salary of the captains, lieutenants, sergeants and patrolmen shall be fixed by the board, with the approval of the state board of examiners. In the event that a probationary patrolman is appointed permanently, he shall, at the time of such appointment, receive the base

salary of patrolmen. These salaries shall be increased one per cent (1%) per year for each additional year of service.

(3) Qualifications. (a) Patrolmen shall possess the following qualifications:

- (i) Sound and active physical and mental condition.
- (ii) Good moral character.
- (iii) Resident of Montana for at least one (1) year immediately prior to appointment.
- (iv) Pass a satisfactory test in the operation of automobiles.
- (v) Citizens of the United States and state of Montana.

(4) Probationary training. (a) All new patrolmen shall be placed under probationary training and service for a period of six (6) months to one (1) year, during which time the highway patrol chief must recommend to the highway patrol board for permanent appointments; otherwise the probationary patrolmen will automatically be discharged.

(b) All newly appointed captains, lieutenants and sergeants shall be placed under probationary training and service for a period of six (6) months to one (1) year, during which time the highway patrol chief must recommend to the highway patrol board for permanent appointments; otherwise the captains, lieutenants and sergeants will automatically revert to their previous ranks without prejudice.

(5) Tenure of office. Every person employed or appointed and designated as a chief, captain, lieutenant, sergeant, or patrolman under and pursuant to the provisions of this act, except as provided in subsection (4) above, shall continue in service and hold his position without demotion until suspended, demoted, or discharged in the manner hereinafter provided, for one (1) or more of the causes specified in the following subsection.

(6) Suspension, demotion or discharge. Cause for suspension, demotion or discharge will be:

(a) Conviction of any crime involving moral turpitude in any court of competent jurisdiction subsequent to the commencement of such employment.

(b) Gross neglect of duty or willful violation or disobedience of orders or regulations.

(c) Loitering about or entering places of ill fame, ill repute, or where gambling is known to be conducted or to be in progress, except in the immediate discharge of duty.

(d) Conduct unbecoming an officer.

(e) Drinking intoxicating liquor while using state-owned cars or in uniform, or being intoxicated in a public place.

(f) Sleeping while on duty.

(g) Incapacity, or partial incapacity, materially affecting his ability to perform his official duties.

(h) Gross inefficiency in performing duties.

(i) Active participation in any political campaign by supporting or opposing, directly or indirectly, any political candidate, or contributing financially or otherwise, directly or indirectly, to the success or defeat of any political party or candidate.



(j) Willful disobedience of rules and regulations adopted by the board, governing the conduct and discipline of members of the patrol.

(7) Method of preferring charges. (a) The charge or charges against any patrolman shall be made in writing and shall be signed and sworn to by the person making the charge or charges.

(b) The written charge or charges shall be filed with the chief of the Montana highway patrol.

(c) Any charge or charges which could result in the suspension or discharge of the chief or a captain shall be filed directly with the highway patrol board.

(d) When charges are filed and the chief believes that such charge or charges constitute grounds for suspension, demotion or discharge, he shall order a hearing to be had thereon before the highway patrol board and fix a time for such hearing.

(e) When charges are filed and the chief believes such charge or charges do not constitute grounds for suspension, demotion or discharge he shall dismiss such charges.

(f) The highway patrol board shall have the authority to order the chief to file charges with the board when the chief in his judgment does not believe the charge or charges warrant a hearing.

(8) Authority to suspend, demote or discharge. (a) When the highway patrol chief has cause to believe that any member of the highway patrol has violated any of the hereinabove grounds for suspension, demotion or discharge, or his conduct has warranted reprimanding, he may, with the approval of the Montana highway patrol board, suspend, demote or reprimand the member.

(b) If the chief orders a hearing he may suspend such patrolman pending the rendition of the decision made in such case.

(9) Length of suspension—demotion pay status. (a) Any member under suspension shall be on leave without pay and for a period not to exceed thirty (30) days in time.

(b) In cases of disciplinary action resulting in demotion, the member shall receive the pay of the rank to which he is demoted.

(10) Notification of hearing. (a) The chief shall, at least ten (10) days before the time appointed for a hearing, serve written notice specifying the charge or charges filed and stating the name of the person or persons making the charge or charges, on the accused patrolman personally, if his whereabouts is known, in the state of Montana.

(b) If at the time, the whereabouts of the accused patrolman is unknown, or if he be outside of the state of Montana, service may be made upon him by mailing the written notice to him at his last known place of residence in Montana.

(11) Hearing. (a) The highway patrol board shall be the authority to hear such charge or charges and render a decision and appropriate order.

(b) The highway patrol board shall have the power to compel the attendance of witnesses at any such hearing and to examine them under oath and to require the production of books, papers, and other evidence at such hearing and for that purpose issue subpoenas and cause the same to be served and executed in any part of the state.

(c) The accused patrolman shall be entitled to be confronted with the witnesses against him and have an opportunity to cross-examine the same and to introduce at such hearing testimony in his own behalf and shall be entitled to be represented by counsel at such hearing.

(d) The highway patrol board shall within fifteen (15) days after such hearing render its decision in writing and file same in its office with the chief and with the patrolman accused also.

(12) Disciplinary action. (a) If, after a hearing, the highway patrol board finds that any such charge or charges, made against the patrolman be true, it may punish the offending party by reprimand, suspension without pay, demotion, or discharge.

(b) If after the hearing, the highway patrol board finds that the charge or charges made against the patrolman not be true, the board shall reinstate the accused patrolman to his position and rank and shall order the payment of any salary withheld pending the determination of the charge or charges.

(13) Right to appeal. (a) Any patrolman who is suspended, demoted, or discharged may have a right of appeal to the district court of Lewis and Clark county.

(b) Such appeal must be made within ten (10) days after such decision or determination of the highway patrol board.

(c) The district court shall review such decision or determination in a summary manner and shall render its decision upon such appeal within ninety (90) days from the filing of such appeal in said court.

(d) If the decision or determination of the highway patrol board shall be finally reversed or modified by the district court, the accused patrolman shall be reinstated in his position and the highway patrol board shall pay to the said patrolman any salary or wages withheld from him pending the determination of the charge or charges, or as may be directed by the court.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967.

#### Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

**31-105.1. Salaries paid out of earmarked revenue fund.** All salaries of members of the highway patrol shall be paid out of the earmarked revenue fund of the highway department.

History: En. Sec. 1, Ch. 285, L. 1971. members of the highway patrol be paid out of funds of the highway department.

#### Title of Act

An act to provide that all salaries of

**31-110. Offenses for which arrest may be made by patrolmen—murder, etc.—patrolmen when police officers—forbidden to act in labor disputes—temporary control of traffic in cities and towns—investigations of accidents—inspection of livestock.** In addition to the above duties, the highway patrol supervisor and all patrolmen are authorized under this act to make arrests for the following offenses committed; if committed in the presence of said supervisor or any of said patrolmen, or if committed in a rural

district, upon the request of a peace officer, or if committed in a city or town of less than twenty-five hundred (2500) inhabitants, upon the request of any peace officer, or the mayor of said city or town: The crimes of murder, assault with a deadly weapon, arson, burglary, larceny, kidnapping, illegal transportation of narcotics, or violation of the Dyer act regarding the transportation of stolen automobiles. Provided, that such highway patrolmen shall have no authority and are expressly forbidden to make arrests in labor disputes or in preventing violence in connection with strikes, and shall not be permitted to perform any duties whatsoever in connection with labor disputes, strikes or boycotts.

Patrolmen shall be deemed police officers in making arrests in all offenses occurring on the highways and in the use of motor vehicles or the registration thereof, and for the purpose of serving warrants of arrest in connection with such violations.

The patrolmen are also hereby empowered to stop any truck or motor vehicle in which livestock or livestock products are being transported and ascertain whether the driver of such truck or vehicle is rightfully in possession of such livestock or livestock products; and whenever the patrolmen have good reason to believe that such livestock or livestock products have been stolen, they are empowered to take possession of the same until such livestock or livestock products can be delivered into the custody of the sheriff or until such time as the facts as to the actual ownership can be ascertained.

**History:** En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965.

#### **Amendment**

The 1965 amendment deleted from the end of the first paragraph a clause reading "and shall not be permitted to congregate or act as a unit in one county to suppress riots or preserve the peace"; and deleted the former third paragraph, for text of which see parent volume.

#### **Repealing Clause**

Section 2 of Ch. 63, Laws 1965 repealed all acts parts of acts in conflict therewith.

#### **Effective Date**

Section 3 of Ch. 63, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 25, 1965.

#### **Cross-References**

Authority of members of Montana university system security department to issue traffic citations, sec. 75-8514.

Highway patrol functions transferred to division of motor vehicles, sec. 82A-1206.

**31-114. Highway patrol—fees—fines and forfeitures.** All fees, fines and forfeitures collected in any court from persons apprehended or arrested by patrolmen for violation of this act and the laws and regulations relating to the use of state highways and the operation of vehicles thereon must be paid to the state treasurer of Montana and by him credited to the general fund of the state, except for that portion of the fines, as provided in section 4 [75-5304] of this act, which shall be paid into the automobile driver education account in the earmarked revenue fund; and at the time of payment of any such fee, fine or forfeiture there shall be filed with the state treasurer a complete statement showing the total of the fees, fines or forfeitures received or incurred, which statement shall give the title of the court and cause and be subscribed to by the person or officer making such payments.



**History:** En. Sec. 14, Ch. 199, L. 1943; amd. Sec. 10, Ch. 226, L. 1965; amd. Sec. 9, Ch. 214, L. 1969.

#### Compiler's Notes

Section 75-5304, referred to in this section, was repealed by sec. 12, Ch. 214, Laws 1969. For similar provisions in current law, see sec. 75-7902.

#### Amendments

The 1965 amendment inserted "except

the penalty assessments levied and paid as provided for in section 4 of this act, which shall be paid into the automobile driver education account in the earmarked revenue fund" after "general fund of the state."

The 1969 amendment substituted "except for that portion of the fines, as provided in section 4 of this act" for "except the penalty assessments levied and paid or provided for in section 4 of this act."

**31-117. Drivers' examination section of highway patrol.** There is hereby created a drivers' examination section of the Montana highway patrol, under the direct control and supervision of the Montana highway patrol board. Said board shall maintain a permanent place of business at the state capitol and shall meet at least once each month for the purpose of transacting business either as the drivers' examining board, the highway patrol board, or jointly for the two. The board shall select a chief examiner, and deputy chief examiner, as many assistant chief examiners and examiners as it deems necessary and shall provide for the necessary clerical help.

The chief examiner, deputy chief examiner, assistant chief examiners and all examiners shall have the same qualifications as are required for members of the Montana highway patrol. The chief examiner shall rank as a captain, the deputy chief examiner as a lieutenant, the assistant chief examiners shall rank as sergeants, and the examiners shall rank as patrolmen.

**History:** En. Sec. 1, Ch. 267, L. 1947; amd. Sec. 1, Ch. 141, L. 1951; amd. Sec. 1, Ch. 101, L. 1957; amd. Sec. 1, Ch. 42, L. 1969.

selection of a "deputy chief examiner" by the board.

#### Cross-References

Highway patrol board functions transferred to division of motor vehicles, sec. 82A-1205 (2).

#### Amendments

The 1969 amendment provided for the

**31-119. Vehicle—motor vehicle—farm tractor—school bus—bus—motorcycle.** (a). \* \* \* [Same as parent volume.]

(b) Motor vehicle. Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, excluding motorcycles.

(c) and (d). \* \* \* [Same as parent volume.]

(e) Bus. Every motor vehicle designed for carrying more than ten (10) passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(f) Motorcycle. Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, but excluding a tractor.

**History:** En. Sec. 3, Ch. 267, L. 1947; amd. Sec. 1, Ch. 291, L. 1973.

#### Amendments

The 1973 amendment added "excluding motorcycles" to the end of subsection (b); and added subsections (e) and (f).

**31-123. Chief—board.** (a) Chief. The chief of the Montana highway patrol.

(b) \* \* \* [Same as parent volume.]

**History:** En. Sec. 7, Ch. 267, L. 1947; amd. Sec. 1, Ch. 155, L. 1969.

**Cross-References**

Functions of highway patrol board and chief transferred to division of motor vehicles, secs. 82A-1205 (2), 82A-1206.

**Amendments**

The 1969 amendment substituted "chief" for "supervisor" in subsection (a).

**31-126. What persons are exempt from license.** The following persons are exempt from license hereunder:

1 to 3. \* \* \* [Same as parent volume.]

4. A nonresident who is at least eighteen (18) years of age and who has in his immediate possession a valid chauffeur's license issued to him in his home state or country may operate a motor vehicle in this state either as an operator or chauffeur subject to the age limits applicable to chauffeurs in this state;

5 and 6. \* \* \* [Same as parent volume.]

**History:** En. Sec. 10, Ch. 267, L. 1947; amd. Sec. 1, Ch. 95, L. 1955; amd. Sec. 1, Ch. 137, L. 1961; amd. Sec. 1, Ch. 133, L. 1969.

**Amendments**

The 1969 amendment, in subdivision (4), deleted a requirement that a nonresident be licensed as a chauffeur in Montana before accepting employment as a chauffeur for a Montana resident.

**31-127. What persons shall not be licensed.** The division of motor vehicles shall not issue any license hereunder:

1. To any person, as an operator, who is under the age of sixteen (16) years, with these exceptions:

(a) The division may issue an operator's license to a person who is fifteen (15) years if he has passed a driver's education course approved by the division and the superintendent of public instruction.

(b) The division may issue a restricted license as hereinafter provided to any person who is at least thirteen (13) years of age;

2. To any person, as a chauffeur, employed by another for the principal purpose of driving a motor vehicle when in use exclusively for the transportation of property for compensation, who is under the age of eighteen (18) years, nor to any person, as a chauffeur, who is employed by another for the principal purpose of driving a motor vehicle transporting passengers for hire or transporting school children, who is under the age of eighteen (18) years;

3. To any person, as an operator or chauffeur, whose license has been suspended during the suspension, nor to any person whose license has been revoked, except as provided in section 31-149;

4 and 5. \* \* \* [Same as parent volume.]

6. To any person, as an operator or chauffeur, who is required by this act to take an examination, unless the person shall have successfully passed such examination;

7. \* \* \* [Same as parent volume.]

8. To any person as an operator or chauffeur, who is suffering from any form of epileptic type seizures or similar disorders characterized by

lapse of consciousness or control, either temporary or prolonged, which is or may become chronic: provided that the division may in its discretion issue a license to a person suffering from epileptic type seizures or similar disorder characterized by lapse of consciousness or control, if otherwise qualified to be licensed to drive a motor vehicle, when the afflicted person can show through a written report from his attending physician that he has not experienced an epileptic type seizure or similar disorder characterized by lapse of consciousness or control for a sufficient period and that the condition is stabilized as attested to by said physician.

**History:** En. Sec. 11, Ch. 267, L. 1947; amd. Sec. 1, Ch. 60, L. 1955; amd. Sec. 1, Ch. 227, L. 1965; amd. Sec. 14, Ch. 94, L. 1973; amd. Sec. 1, Ch. 178, L. 1973.

#### Compiler's Notes

This section was amended twice in 1973, once by Ch. 94 and once by Ch. 178. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

The 1965 amendment changed the format of subsection (1); increased the age set out in the preliminary paragraph of subsection (1) from fifteen to sixteen; and inserted paragraph (1) (a).

Chapter 94, Laws of 1973, reduced the

age specified at the end of subdivision 2 from twenty-one to eighteen years.

Chapter 178, Laws of 1973, substituted "division of motor vehicles" and "division" for "board" throughout the section; inserted "through a written report from his attending physician" following "when the afflicted person can show" in subdivision 8; substituted "a sufficient period and that the condition is stabilized as attested to by said physician" for "a period of two (2) years and when recommended by the state health officer as being controlled medically or otherwise to the degree that the affliction will not interfere with the safe operation of a motor vehicle" at the end of subdivision 8; and made minor changes in style and phraseology.

#### Cross-Reference

Driver education courses, secs. 75-7901 to 75-7907.

**31-128. Classification of chauffeurs—special restrictions.** (a). \* \* \*  
[Same as parent volume.]

(b) No person who is under the age of eighteen (18) years shall drive any school bus transporting school children or any motor vehicle when in use for the transportation of persons for compensation nor in either event until he has been licensed as a chauffeur for either such purpose and the license so indicates. The board shall not issue a chauffeur's license for either such purpose unless the applicant has had at least one (1) year of driving experience prior thereto and the board is fully satisfied as to the applicant's competency and fitness to be employed.

**History:** En. Sec. 12, Ch. 267, L. 1947; amd. Sec. 1, Ch. 26, L. 1969; amd. Sec. 15, Ch. 94, L. 1973.

#### Amendments

The 1969 amendment, in subsection (b),

deleted a requirement that three people certify an applicant's good character.

The 1973 amendment reduced the age specified near the beginning of subsection (b) from twenty-one to eighteen years.

**31-129. Instruction and traffic education permits and temporary licenses.** (a) Any person satisfying the age requirements specified in 31-127 (1), may apply to the board for an instruction permit. The board may in its discretion, after the applicant has successfully passed all parts of the examination other than the driving test, issue to the applicant an instruction permit which shall entitle the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the



public highways for a period of six (6) months when accompanied by a licensed operator or chauffeur who is occupying a seat beside the driver. In addition, the board may issue such an instruction permit to any person who is at least fourteen and one-half (14½) years of age and who is successfully participating in a traffic education course approved by the Montana highway patrol and the superintendent of public instruction. Any instruction permit so issued shall be restricted to the operation of a motor vehicle only when accompanied by an approved instructor or licensed parent or guardian and may be further restricted to specific times and/or areas.

(b) The board upon receiving proper application may in its discretion issue a traffic education permit effective for a school year or more restricted period to an applicant who is enrolled in a traffic education program approved by the board even though the applicant has not reached the legal age to be eligible for an operator's license. Such permit shall entitle the permittee when he has such a permit in his immediate possession to operate only on a designated highway or within a designated area a motor vehicle only when an approved instructor is occupying a seat beside the permittee or a motorcycle only when under the immediate and proximate supervision of an approved instructor.

(c). \* \* \* [Same as parent volume.]

History: En. Sec. 13, Ch. 267, L. 1947; amd. Sec. 1, Ch. 120, L. 1961; amd. Sec. 1, Ch. 55, L. 1969; amd. Sec. 1, Ch. 271, L. 1973; amd. Sec. 1, Ch. 19, L. 1974.

substituted "traffic education" for "restricted instruction" in subsection (b); and deleted "instruction" before "permit" near the beginning of the second sentence in subsection (b).

#### Amendments

The 1969 amendment, in subsection (a), substituted "satisfying the age requirement specified in 31-127 (1)" for "who is at least fifteen (15) years of age" and deleted an exception authorizing the holder of an instruction permit to operate a motorcycle.

The 1973 amendment added the third and fourth sentences to subsection (a);

The 1974 amendment deleted "a motor vehicle" after "operate" near the end of subdivision (b); substituted "a motor vehicle" for "but" after "designated area" near the end of subdivision (b); added "or a motorcycle only when under the immediate and proximate supervision of an approved instructor" at the end of the same subdivision; and made a minor change in punctuation.

**31-130. Application for license, instruction permit or motorcycle endorsement.** (a) Every application for an instruction permit, operator's or chauffeur's license or motorcycle endorsement shall be made upon a form furnished by the board. Every application shall be accompanied by the proper fee and payment of such fee shall entitle the applicant to not more than three attempts to pass the examination within a period of six (6) months from the date of application.

(b). \* \* \* [Same as parent volume.]

(c) Whenever application is received from an applicant previously licensed by any other jurisdiction or jurisdictions, the board shall request a copy of such applicant's driving record from such previous licensing jurisdiction or jurisdictions. When received, such driving records shall become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.

**History:** En. Sec. 14, Ch. 267, L. 1947; for applications for "motorcycle endorsement" in subsection (a) and added subsection (c).  
amd. Sec. 1, Ch. 28, L. 1969.

**Amendments**

The 1969 amendment inserted provisions

**31-131. Application of minors.**

**References**

Castle v. Thisted, 139 M 328, 363 P 2d 724, 725.

**31-135. Licenses issued to operators and chauffeurs—renewals and expiration thereof.** (a) The highway patrol board shall have authority to appoint county treasurers and other qualified officers to act as its agent or agents for the sale of drivers' licenses, and shall make necessary rules and regulations governing such sales. The board, upon payment of the fees specified in this act, (of which sum five per cent (5%) shall be retained by the county treasurers for use of the county general fund) shall issue to every applicant qualifying therefor, an operator's or chauffeur's license as applied for, and such licenses shall contain a photograph of such licensee in such size and form as may be prescribed by the highway patrol board, a distinguishing number issued to the licensee, the full name, date of birth, resident address, and a brief description of the licensee and either a facsimile of the signature of the licensee or a space upon which he shall write his signature in pen and ink, immediately upon receipt of the license. No license shall be valid until it has been so signed by the licensee.

(b) The board shall, when any person applies for renewal of an operator's or chauffeur's license, test the applicant's eyesight, and may also, in the board's discretion, have such applicant demonstrate his physical ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle. A person shall be deemed to have applied for renewal of a Montana operator's or chauffeur's license if such application is made within three (3) months of the expiration of such license.

(c) Licenses issued shall expire on the anniversary of the date of birth of the licensee four (4) years or less after the date of issue. Notwithstanding the foregoing provisions, the highway patrol board shall stagger initial license terms for the purpose of equalizing annual issuance of licenses and shall collect license fees proportionate to the term of such licenses.

(d) Whenever the board issues an original license to a person under the age of eighteen (18) years, such license shall be designated and clearly marked as a "provisional license." Any license so designated and marked may be suspended by the board for a period of not more than twelve (12) months, when its record discloses that the licensee, subsequent to the issuance of such license, has been guilty of careless or negligent driving. Upon renewal as applicable to operator's licenses, the board may for any reasonable cause, as shown by its records, designate the renewal of the license as provisional, otherwise, a license in usual form shall be issued subject to other provisions of the laws of Montana.

(e) It shall be unlawful for any person to have in his possession or

under his control, more than one (1) Montana operator's or chauffeur's license at any one time.

(f) Driver license fees. Fees for driver license shall be as follows:

1. Driver's license—two dollars (\$2) per year or fraction thereof.

**History:** En. Sec. 19, Ch. 267, L. 1947; amd. Sec. 1, Ch. 135, L. 1951; amd. Sec. 1, Ch. 130, L. 1953; amd. Sec. 1, Ch. 249, L. 1961; amd. Sec. 1, Ch. 228, L. 1963; amd. Sec. 1, Ch. 23, L. 1967; amd. Sec. 1, Ch. 288, L. 1971; amd. Sec. 4, Ch. 423, L. 1971.

#### Compiler's Notes

This section was amended twice in 1971, once by Ch. 288 and once by Ch. 423. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

The 1963 amendment completely re-wrote subsection (b), for previous text of which see parent volume; and made a minor change in punctuation.

The 1967 amendment inserted "(of which sum \* \* \* county general fund)" in the second sentence of subsection (a); and made minor changes in subsections (a) and (b).

Chapter 288, Laws of 1971, substituted "the fees specified in this act" for "four dollars (\$4)" in the second sentence of subsection (a); deleted language providing for biennial expiration of licenses after "as applied for" in the second sentence

of subsection (a); inserted "and such licenses" before "shall contain a photograph" in the second sentence of subsection (a); substituted the second sentence of subsection (b) for "This examination shall not be required of any applicant who has successfully completed such an examination within the preceding five (5) year period"; inserted subsection (c); redesignated former subsections (c) and (d) as subsections (d) and (e); and added subsection (f).

Chapter 423, Laws of 1971, reduced the age specified in the first sentence of the present subsection (d) from 21 to 18 years.

#### Effective Date

Section 2 of Ch. 228, Laws 1963 provided the act should be in effect upon its passage and approval. Approved March 9, 1963.

#### Validity of Amendment

The 1961 amendment of this section [House Bill No. 342] was not rendered invalid because the deciding vote therein was cast by the lieutenant governor on the third reading, where at that time the senators then present and voting, were equally divided. *State ex rel. Easbey v. Highway Patrol Board*, 140 M 383, 372 P 2d 930, 939.

**31-138. Duplicate certificates.** In the event that an instruction permit or operator's or chauffeur's license issued under the provisions of this act is lost or destroyed, the person to whom the same was issued may, upon the payment of a fee of one dollar (\$1.00), obtain a duplicate, or substitute thereof, upon furnishing proof satisfactory to the board that such permit or license has been lost or destroyed.

**History:** En. Sec. 22, Ch. 267, L. 1947; amd. Sec. 1, Ch. 36, L. 1953; amd. Sec. 16, Ch. 121, L. 1965.

#### Amendment

The 1965 amendment increased the fee for duplicate certificates from 50¢ to \$1.00.

**31-142. Authority of board to cancel licenses.** (a) The board is hereby authorized to cancel any operator's or chauffeur's license upon determining that the licensee was not entitled to the issuance thereof hereunder or that since the issuance thereof said licensee has become ineligible, such ineligibility shall be determined pursuant to the provisions of section 31-127, or that said licensee failed to give the required or correct information in his application or committed any fraud in making such application.

(b). \* \* \* [Same as parent volume.]



**History:** En. Sec. 26, Ch. 267, L. 1947; amd. Sec. 1, Ch. 219, L. 1973.

**Amendments**

The 1973 amendment inserted "or that

since the issuance thereof said licensee has become ineligible, such ineligibility shall be determined pursuant to the provisions of section 31-127" in subsection (a).

**31-145. When court to forward license to board and report convictions.** (a) Whenever any person is convicted of any offense for which this act makes mandatory the revocation of the operator's or chauffeur's license of such person by the board, the court in which such conviction is had shall require the surrender to it of all operator's and chauffeur's licenses then held by the person so convicted. The court shall thereupon, within five (5) days, forward said license to the board and at the same time forward a record of such conviction to the board, providing that if such person does not possess a driver's license the court shall so indicate in its report to the board.

(b) Every court having jurisdiction over offenses committed under this act, or any other act of this state or municipal ordinance regulating the operation of motor vehicles on highways, shall forward, within five (5) days, to the board a record of the conviction or forfeiture of bail, not vacated, of any person in said court for a violation of any said laws other than regulations governing standing or parking, and may recommend the suspension of the operator's or chauffeur's license of the person so convicted.

(c) and (d). \* \* \* [Same as parent volume.]

**History:** En. Sec. 29, Ch. 267, L. 1947; amd. Sec. 1, Ch. 165, L. 1957; amd. Sec. 1, Ch. 27, L. 1961; amd. Sec. 1, Ch. 386, L. 1973.

**Amendments**

The 1973 amendment inserted "within five (5) days" in the second sentence of subsection (a) and in subsection (b).

**31-146. Mandatory revocation of license by board or chief upon proper authority.** The board or chief upon proper authority shall forthwith revoke the license or operating privilege of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction or forfeiture of bail not vacated of any of the following offenses, when such conviction or forfeiture has become final:

1. \* \* \* [Same as parent volume.]

2. Driving a motor vehicle while under the influence of intoxicating liquor or narcotic drug, or willfully or knowingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle or a combination thereof;

3 to 6. \* \* \* [Same as parent volume.]

**History:** En. Sec. 30, Ch. 267, L. 1947; amd. Sec. 1, Ch. 192, L. 1957; amd. Sec. 1, Ch. 125, L. 1961; amd. Sec. 2, Ch. 155, L. 1969.

**Amendments**

The 1969 amendment substituted "chief" for "supervisor" in the first paragraph and inserted "or willfully \* \* \* motor vehicle" in subdivision (2).

**31-147. Authority of board to suspend license or driving privilege or issue probationary license.** (a) The board is hereby authorized to suspend the license or driving privilege of an operator or chauffeur

without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

1. Has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage;
2. Has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;
3. Is an habitually reckless or negligent driver of a motor vehicle;
4. Is incompetent to drive a motor vehicle;
5. Has permitted an unlawful or fraudulent use of such license as specified in section 31-153;
6. Has committed an offense in another state which if committed in this state would be grounds for suspension or revocation; or
7. Has falsified his date of birth on his application for a driver's license.

(b). \* \* \* [Same as parent volume.]

(c) Upon suspending the license of any person or upon placing such person on probation, as hereinbefore in this section authorized, the board shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing as early as practical within not to exceed twenty (20) days after receipt of such request in the county wherein the licensee resides unless the board and the licensee agree that such hearing may be held in some other county. Upon such hearing the chief or his duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a re-examination of the licensee. Upon such hearing the board shall either rescind its order of suspension or probation, or, good cause appearing therefor, may affirm, reduce or extend the period of probation or suspension of such license.

**History:** En. Sec. 31, Ch. 267, L. 1947; amd. Sec. 1, Ch. 101, L. 1961; amd. Sec. 1, Ch. 137, L. 1969.

#### Amendments

The 1969 amendment deleted former subdivision (a)(1) authorizing suspension for "offense for which mandatory revocation of license is required upon conviction," designated former subdivisions (a) (2) to (a)(8) as (a)(1) to (a)(7), added "as specified in section 31-153" to subdivision (a)(5), and substituted "chief" for "supervisor" in subsection (c).

#### Suspension of License Not Punishment

The purpose and nature of the suspension of a driver's license is for the protection of the unsuspecting public and does not constitute "punishment" as understood within the meaning of the law, so that highway patrol board can take into consideration past driving violations before a previous suspension of a driver's license in suspending his license again. In re France, 147 M 283, 411 P 2d 732.

**31-149. Period of suspension or revocation.** (a) The board shall not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than one (1) year, except as permitted under sections 31-148, 31-155, 53-424 and 53-430, R. C. M. 1947.

(b) Any person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked shall not be en-

titled to have such license or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the period of such revocation or suspension, such person may make application for a new license as provided by law, but the board shall not then issue a new license unless and until it is satisfied after investigation of character, habits, and driving ability of such person that it will be safe to grant the privilege of driving a motor vehicle on the public highways. Provided, however, when any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or narcotic drug, or knowingly or willingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle or a combination thereof, the board shall, upon receiving a report of such conviction or forfeiture of bail or collateral not vacated, suspend or revoke the license or driving privilege of such person for a period of sixty (60) days. Upon receiving a report of a conviction or forfeiture of bail or collateral for a subsequent such offense, within five (5) years thereof, the board shall suspend or revoke the license or driving privilege of such person for a period of one (1) year.

(c) The revocation period for all revocations made mandatory by section 31-146, R. C. M. 1947, shall be one (1) year, except as provided in subsection (b) of this section.

**History:** En. Sec. 33, Ch. 267, L. 1947; amd. Sec. 1, Ch. 126, L. 1957; amd. Sec. 1, Ch. 161, L. 1961; amd. Sec. 1, Ch. 339, L. 1969.

ingly \* \* \* a motor vehicle" after "narcotic drug" in subsection (b) and added subsection (c).

#### **Amendments**

The 1969 amendment inserted "or know-

#### **References**

In re France, 147 M 283, 411 P 2d 732.

**31-163. Driver license compact enacted—text.** This act shall be known and may be cited as the "Driver License Compact."

### **ARTICLE I—FINDINGS AND DECLARATION OF POLICY**

(a) The party states find that:

(1) The safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles.

(2) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

(3) The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

(b) It is the policy of each of the party states to:

(1) Promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.



(2) Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the over-all compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

## ARTICLE II—DEFINITIONS

As used in this compact:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) "Home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(c) "Conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

## ARTICLE III—REPORTS OF CONVICTION

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security; and shall include any special findings made in connection therewith.

## ARTICLE IV—EFFECT OF CONVICTION

(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used;

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(b) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

(c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (a) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature, and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

#### ARTICLE V—APPLICATIONS FOR NEW LICENSES

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

#### ARTICLE VI—APPLICABILITY OF OTHER LAWS

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other co-operative arrangement between a party state and a nonparty state.

#### ARTICLE VII—COMPACT ADMINISTRATOR AND INTERCHANGE OF INFORMATION

(a) The head of the licensing authority of each party state shall be the administrator of this compact for his state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

## ARTICLE VIII—ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six (6) months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

## ARTICLE IX—CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

**History:** En. Sec. 1, Ch. 154, L. 1963.

### Title of Act

An act to establish a stable and uniform basis for interstate co-operation in driver licensing and the reporting of convictions and to be known as the Driver License Compact; setting forth the basic purposes of the compact; defining certain terms used in act; requiring party state to report convictions to licensing authority of home state of licensee; providing party state may give same effect of conviction regardless of jurisdiction of occurrence; providing that license authority in party state shall not issue license to party whose license has been suspended, revoked or to

party who fails to surrender license of another party state; providing that adoption of compact will not nullify existing statutes; providing for administrator of act; providing for entry and withdrawal from compact; providing for construction and severability of act; providing that if any part of act held unconstitutional it shall not affect remaining parts of act; defining "licensing authority" and "executive head"; providing authority to furnish information to member states; providing that administrator shall not be entitled to additional compensation; requiring agencies or court to report to state agency; repealing all acts or parts of acts in conflict herewith.

31-164. Highway patrol board as licensing authority—information and documents furnished. As used in the compact, the term "licensing authority" with reference to this state, shall mean the Montana highway patrol board. Said board shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of Articles III, IV and V of the compact.

**History:** En. Sec. 2, Ch. 154, L. 1963.



**31-165. Reimbursement of compact administrator.** The compact administrator provided for in Article VII of the compact shall not be entitled to any additional compensation on account of his service as such administrator, but shall be entitled to expenses incurred in connection with his duties and responsibilities as such administrator, in the same manner as for expenses incurred in connection with any other duties or responsibilities of his office or employment.

**History:** En. Sec. 3, Ch. 154, L. 1963.

**31-166. Governor as executive head.** As used in the compact, with reference to this state, the term "executive head" shall mean the governor.

**History:** En. Sec. 4, Ch. 154, L. 1963.

**31-167. Report to highway patrol board of suspension or revocation of licenses.** Any court or other agency of this state, or a subdivision thereof, which has jurisdiction to take any action suspending, revoking or otherwise limiting a license to drive, shall report any such action and the adjudication upon which it is based to the Montana highway patrol board within five (5) days on forms furnished by the Montana highway patrol board.

**History:** En. Sec. 5, Ch. 154, L. 1963.

**31-168. Offenses furnishing ground for suspension or revocation of license.** Items enumerated in Article IV (a), subsections (1), (2), (3) and (4) [31-163] of this act refer specifically to sections 94-2507, 32-2142, 94-114 and 32-1202, Revised Codes of Montana, 1947, respectively.

In addition to convictions mentioned above the Montana highway patrol board for the purpose of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if such conduct had occurred in this state for convictions of: 1. perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (31-154, Revised Codes of Montana, 1947) and; 2. three (3) convictions of reckless driving committed within a period of twelve (12) months (32-2143, Revised Codes of Montana, 1947).

**History:** En. Sec. 6, Ch. 154, L. 1963. in this section were repealed by Sec. 32 of Ch. 513, Laws 1973. See secs. 94-2-101(15) and 94-5-103.

**Compiler's Notes**

Sections 94-114 and 94-2507 referred to

**31-169. Review of administrative actions.** Any act or omission of any official or employee of this state done or omitted pursuant to, or in enforcing, the provisions of the "Driver License Compact" shall be subject to review pursuant to the provisions of section 31-152, Revised Codes of Montana, 1947, but any review of the validity of any conviction reported pursuant to the compact shall be limited to establishing the identity of the person so convicted.

**History:** En. Sec. 8, Ch. 154, L. 1963.

pealed all acts or parts of acts in conflict therewith.

**Repealing Clause**

Section 7 of Ch. 154, Laws 1963 re-

**31-170. Authority of board to issue identification cards.** The Montana highway patrol board is hereby authorized to issue identification cards to any person over the age of eighteen (18) years not the holder of a valid driver's license.

History: En. Sec. 1, Ch. 53, L. 1971.

board to issue identification cards to persons over eighteen (18) years of age.

**Title of Act**

An act to authorize the highway patrol

**31-171. Rules and regulations for identification cards.** The highway patrol board shall formulate reasonable rules and regulations for the application, issuing identification cards and cancellation thereof, and require the furnishing of such information necessary for the purpose of this act.

History: En. Sec. 2, Ch. 53, L. 1971.

**31-172. Immunity of public entities for inaccurate identification cards.** No public entity shall be liable for any loss or injury resulting directly or indirectly from false or inaccurate information contained in identification cards provided for in this article.

History: En. Sec. 3, Ch. 53, L. 1971.

**31-173. Agents for issuance of identification cards.** The highway patrol board shall have authority to appoint county treasurer and other qualified officers to act as its agent for the issuance of such identification cards.

History: En. Sec. 4, Ch. 53, L. 1971.

**31-174. Fees for identification cards.** Fees not in excess of one dollar (\$1) for such identification cards shall be collected and credited to a revolving fund which shall be known as the Montana Highway Patrol Identification Card Fund. Such fund shall be used by the Montana highway patrol to defray the cost of issuing identification cards.

History: En. Sec. 5, Ch. 53, L. 1971.

**31-175. Purpose.** This act is predicated upon the belief and philosophy that innocent drivers and other innocent passengers and pedestrians have a constitutional right to live, free from fear of death or injury from habitual traffic offenders. Further, it is the purpose of this act to reduce the number of motor vehicle accidents in this state, to provide greater safety to the motoring public and others, by denying to the habitual traffic offenders the privilege of operating a motor vehicle upon the public streets and highways of this state.

History: En. 31-175 by Sec. 1, Ch. 362, L. 1974.

viction points leading to revocation of driving privileges; providing for hearings, penalties and appeal procedures; and providing an effective date of January 1, 1975.

**Title of Act**

An act relating to "habitual traffic offenders" providing for a system of con-

**31-176. Legislative intent.** It is the legislative intent of this act:

(1) to establish criteria and procedures by which persons, who have demonstrated their apparent indifference for the safety and welfare of

others and their disrespect for the laws of this state and its political subdivisions and their disregard for the orders of its courts and administrative agencies, may be adjudged habitual traffic offenders; and

(2) to impose increased deprivation of the privilege to operate a motor vehicle upon these persons.

History: En. 31-176 by Sec. 2, Ch. 362,  
L. 1974.

**31-177. Definitions.** As used in this act:

(1) "Habitual traffic offender" means any person, who, within a five (5) year period, from and after passage of this act, accumulates thirty (30) or more conviction points according to the schedule specified in this subsection.

(a) first or second degree murder resulting from the operation of a motor vehicle, fifteen (15) points;

(b) voluntary or involuntary manslaughter resulting from operation of a motor vehicle, twelve (12) points;

(c) any offenses punishable as a felony under the motor vehicle laws of Montana, or any felony in the commission of which a motor vehicle is used, twelve (12) points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind, ten (10) points;

(e) operating a motor vehicle while his license to do so has been suspended or revoked, ten (10) points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, eight (8) points;

(g) willful failure of the driver involved in an accident resulting in property damage of two hundred fifty dollars (\$250) to stop at the scene of the accident and give the required information or to otherwise fail to report an accident in violation of the law, four (4) points;

(h) reckless driving, five (5) points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, six (6) points;

(j) operating a motor vehicle without a license to do so, six (6) points, except as hereafter provided: operating a motor vehicle while license has expired within a period of one hundred and eighty (180) days;

(k) speeding, three (3) points;

(l) all other moving violations including operation of a motor vehicle without a license to do so where said license has expired in the previous one hundred and eighty (180) days, two (2) points;

(m) there shall be no multiple application of cumulative points when two (2) or more charges are filed involving a single occurrence. If there are two (2) or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points shall be chargeable against that defendant.

(2) "Conviction" means a finding of guilt by duly constituted judicial authority, or a plea of guilty, or a forfeiture of bail, bond, or other



security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle which is prohibited by law, ordinance, or administrative order.

(3) "Administrator" means the Montana highway patrol chief.

(4) "Bureau" means the Montana highway patrol bureau.

(5) "License" means any and all types of licenses or permits to operate a motor vehicle.

History: En. 31-177 by Sec. 3, Ch. 362,  
L. 1974.

**31-178. Administrator's duties.** Whenever it appears from the records maintained in the bureau that a person's driving record brings him within the definition of an habitual traffic offender, as defined in section 3 (1) [31-177(1)], the administrator shall forthwith certify two (2) copies of that person's driving record and two (2) copies of all relevant abstracts of conviction. One (1) copy of the record and abstracts shall be certified to the attorney general of the state of Montana, and one (1) copy of the record and abstracts shall be certified to the county attorney for the county wherein the person is found. If the person is not licensed by Montana to drive a motor vehicle, but is licensed in another state, the administrator may certify the copy of the records and abstracts to the attorney general and, also, to the county attorney for the county in which the person is found or, in the alternative, to the county attorney for the county of Lewis and Clark, state of Montana.

History: En. 31-178 by Sec. 4, Ch. 362,  
L. 1974.

**31-179. County attorney to file verified complaint.** Immediately upon receiving the certified documents from the administrator, the county attorney shall, in the name of the state on the relation of the administrator, file a verified complaint with the district court for a civil proceeding against the person named in the certified document and such documents shall be a part of the verified complaint.

History: En. 31-179 by Sec. 5, Ch. 362,  
L. 1974.

**31-180. Notification of attorney general—his duties.** Immediately upon the filing of the verified complaint under section 5 [31-179], the county attorney shall notify the attorney general that the verified complaint has been filed. If the county attorney fails to file the verified complaint within a reasonable time, the attorney general may order the county attorney to file the verified complaint, or, in the alternative, the attorney general may file the verified complaint under section 5 [31-179] in the proper county as above set forth.

History: En. 31-180 by Sec. 6, Ch. 362,  
L. 1974.

**31-181. Abstracts admissible as evidence.** Official abstracts of the records of convictions and bond forfeitures in the custody of the administrator, certified in writing by the administrator to be a correct account of

the said convictions and bond forfeitures, may be admitted in evidence in any judicial proceeding under this act upon establishing the proper foundation.

History: En. 31-181 by Sec. 7, Ch. 362,  
L. 1974.

**31-182. Court to issue show cause order.** The court in which the verified complaint is filed shall advance the proceeding upon the docket and shall enter an order, which incorporates the verified complaint, to show cause why the person named therein should not be adjudged an habitual traffic offender.

History: En. 31-182 by Sec. 8, Ch. 362,  
L. 1974.

**31-183. Service of process.** Service of process shall be made in the same manner as is allowed in any other civil action in this state.

History: En. 31-183 by Sec. 9, Ch. 362,  
L. 1974.

**31-184. Court hearing.** At the time and place designated in the order, the court shall hold a hearing upon the show cause order. If the court finds that the defendant is not the person named in the verified complaint, or that he is not an habitual traffic offender as defined in section 3 (1) [31-177(1)], the proceedings shall be dismissed. If the court finds that the defendant is the same person named in the verified complaint and that the defendant is an habitual traffic offender as defined in section 3 (1) [31-177(1)], the court shall so find and adjudge the defendant an habitual traffic offender, and by appropriate order direct the person so adjudged to surrender to the court his license to operate a motor vehicle on the streets and highways of this state. Upon a finding adverse to the defendant, the clerk of the court wherein the hearing is held, shall file with the bureau a copy of the court's order together with the defendant's license. If the proceeding is dismissed, the clerk of the court wherein the hearing is held, shall file with the bureau a copy of the court's order dismissing the proceeding, which order shall state the ground, or grounds, upon which the dismissal was based, and shall specify the court findings on the conviction points which have been accrued by the defendant.

History: En. 31-184 by Sec. 10, Ch. 362,  
L. 1974.

**31-185. Penalties.** No person who has been adjudged an habitual traffic offender shall be issued a license to operate a motor vehicle in this state until:

(1) a period of three (3) years has elapsed from the date of the final order of the court adjudging the person an habitual traffic offender; and

(2) the person has met all the requirements of all applicable laws and rules and regulations relating to the licensing of motor vehicle operators in this state; and

(3) the person files with the bureau, and maintains for a period of

three (3) years, proof of his financial responsibility in the limits required by law.

History: En. 31-185 by Sec. 11, Ch. 362,  
L. 1974.

**31-186. Unlawful for habitual traffic offender to operate motor vehicle.** It shall be unlawful for any person who has been adjudged an habitual traffic offender under the provisions of this act to operate any motor vehicle in this state while the order of the court prohibiting such operation remains in effect.

History: En. 31-186 by Sec. 12, Ch. 362,  
L. 1974.

**31-187. Habitual traffic offender operating motor vehicle guilty of misdemeanor.** Any person found to be an habitual traffic offender under this act, and who thereafter operates a motor vehicle in this state while the order of the court prohibiting such operation remains in effect, shall be guilty of a misdemeanor, and upon conviction thereof shall be imprisoned for a period of not more than one (1) year or fined not more than one thousand dollars (\$1,000), or both. Provided, however, that, in cases wherein the prohibited operation of a motor vehicle by an habitual traffic offender is necessitated in a situation of extreme emergency in order to save life, limb, or property, he shall not be deemed guilty of a violation under this act.

History: En. 31-187 by Sec. 13, Ch. 362,  
L. 1974.

**31-188. When defendant certified for trial.** For the purpose of enforcing the provisions of this act, in any case in which the defendant is charged with, and found guilty of, operating a motor vehicle while his license to do so is suspended or revoked, or is charged with, and found guilty of, driving without a license, the court, after hearing such charge, shall ascertain whether the defendant has been adjudged an habitual traffic offender and by reason of that judgment is prohibited from operating a motor vehicle in this state. If the court determines that the defendant has been so adjudged and that that judgment remains in effect, the court shall certify the case to the district court of its jurisdiction for trial.

History: En. 31-188 by Sec. 14, Ch. 362,  
L. 1974.

**31-189. Construction.** Nothing contained in this act shall be construed as to repeal, modify, or amend any other laws or parts of laws, or any existing ordinance of any political subdivision relating to the operation or licensing of motor vehicles, the licensing of persons to operate motor vehicles or providing penalties for the violation thereof; nor shall anything in this act be construed so as to preclude the exercise of regulatory powers of any division, agency, department or political subdivision of this state or of the federal government having the statutory power to



regulate the operation and licensing of motor vehicles and the licensing of motor vehicle operators.

History: En. 31-189 by Sec. 15, Ch. 362, L. 1974.

**31-190. Severability.** If any provision of this act is declared unconstitutional or the applicability thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application and to this end the provisions of this act are declared to be severable and the constitutionality of the remainder of this act and the applicability thereof to other persons and circumstances shall not be affected thereby.

History: En. 31-190 by Sec. 16, Ch. 362, L. 1974.

**Effective Date**

Section 17 of Ch. 362, Laws 1973 read  
"This act is effective on January 1, 1975."

## CHAPTER 2—HIGHWAY PATROLMEN'S RETIREMENT SYSTEM

- Section 31-201. Definitions.  
 31-205. Payments into the Montana highway patrolmen's retirement account—investment.  
 31-206. Rules—actuarial data.  
 31-207. Membership.  
 31-209. Payments by contributors.  
 31-210. Contributions by the state of Montana.  
 31-211. Retirement.  
 31-213. Retirement allowance.  
 31-222. Nomination of beneficiary.  
 31-223. Service in the armed forces of the United States.  
 31-224. Fraud—correction of errors.  
 31-228. Optional retirement allowance.  
 31-230. Dormant savings accounts—transfer—subsequent re-entry to membership.  
 31-231. Cost of living.

**31-201. Definitions.** Unless the context requires otherwise, in this act:

(1) "Accumulated deductions" means the total of the amounts deducted from the salary of a contributor and paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

(2) "Department" means the department of administration provided for in Title 82A, chapter 2.

(3) "Beneficiary" means a person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the department.

(4) "Retired patrolman" means a person in receipt of a retirement allowance under this act.

(5) "Board" means the board of administration provided for in section 82A-210.

(6) "Compulsory retirement age" means sixty years of age.

(7) "Contributor" means a person who has accumulated deductions in the fund, standing to his credit.

(8) "Final salary" means the average annual compensation received by a contributor before any deductions have been made, and exclusive

of maintenance, allowances and expenses, for any three (3) years of continuous service upon which contributions have been made, or, in the event a member has not served three (3) years, the total retirement compensation earned, divided by the number of years served.

(9) "Actuarial equivalent" means the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on the person's attained age and sex at the time the option becomes available.

(10) "Account" means the Montana highway patrolmen's retirement account in the agency fund.

(11) "Involuntary retirement" means a retirement not for cause and before retirement age.

(12) "Member's annuity" means payments for life derived from contributions made by the contributor.

(13) "Optional retirement age" means the age at which a contributor may retire after twenty (20) years' service or more.

(14) "Retirement age" means the age at which a member retires after twenty-five (25) years of creditable service with the Montana highway patrol.

(15) "Retirement allowance" means the state annuity plus the member's annuity.

(16) "State annuity" means payments for life derived from contributions made by the state of Montana.

**History:** En. Sec. 1, Ch. 37, L. 1945; amd. Sec. 1, Ch. 243, L. 1955; amd. Sec. 201, Ch. 147, L. 1963; amd. Sec. 5, Ch. 326, L. 1974; amd. Sec. 1, Ch. 361, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 326 and once by Ch. 361. Neither amendatory act mentioned the other and the amendment by Ch. 361 made no changes in the text of the section. The provisions of Ch. 326 are printed above.

#### Amendments

The 1963 amendment substituted the definition of "Account" for a paragraph

reading, "'Fund,' the Montana highway patrolmen's retirement fund."

Chapter 326, Laws of 1974, inserted the numerical subdivision designations; inserted subdivision (2), defining "Department"; substituted "department" for "board" at the end of the definition of "Beneficiary" in subdivision (3); substituted "board of administration provided for in section 82A-210" for "Montana highway patrolman's retirement board" in the definition of "Board" in subdivision (5); and made minor changes in phraseology throughout the section.

Chapter 361, Laws of 1974, made no change in the text of the section.

#### 31-202, 31-203. Repealed.

##### Repeal

Sections 31-202 and 31-203 (Secs. 2, 3, Ch. 37, L. 1945; Sec. 2, Ch. 243, L. 1955),

relating to highway patrolmen's retirement system and board, were repealed by Sec. 103, Ch. 326, Laws of 1974.

**31-205. Payments into the Montana highway patrolmen's retirement account—investment.** All appropriations made by the state, all contributions by members of the Montana highway patrol, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the state treasurer, who shall credit the payments to the Montana highway patrolmen's retirement

account in the agency fund. When there is on deposit in the Montana highway patrolmen's retirement account a sum in excess of twenty-five thousand dollars (\$25,000), the excess will be invested by the board of investments as part of the long term investment fund and any of the account less than twenty-five thousand dollars (\$25,000) in amount shall be invested by the board of investments as part of the short term investment fund when so directed by the board.

**History:** En. Sec. 5, Ch. 37, L. 1945; amd. Sec. 1, Ch. 158, L. 1949; amd. Sec. 1, Ch. 176, L. 1953; amd. Sec. 202, Ch. 147, L. 1963; amd. Sec. 6, Ch. 326, L. 1974.

#### Amendments

The 1963 amendment substituted the references to the "Montana highway patrolmen's retirement account in the agency

fund" for references to the "Montana highway patrolmen's retirement fund."

The 1974 amendment substituted "board of investments" in the second sentence for "state board of land commissioners"; substituted "board" at the end of the section for "Montana highway patrolmen's retirement board"; and made minor changes in phraseology.

**31-206. Rules—actuarial data.** The board may establish rules it considers necessary to carry out its functions under this act. The board shall determine the conditions under which persons may be admitted to and continue to receive benefits under the retirement system. It shall keep such data as shall be necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors to and the beneficiaries of the account, and shall adopt for the retirement system one or more mortality tables.

**History:** En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963; amd. Sec. 7, Ch. 326, L. 1974.

#### Amendments

The 1963 amendment substituted "account" for "fund" in the last sentence.

The 1974 amendment substituted the present first sentence for a phrase reading "The board may establish such rules and regulations as it deems necessary, and is charged within the limitations of this act for its proper administration, operation, and enforcement"; and made minor changes in phraseology.

**31-207. Membership.** Every member of the Montana highway patrol, including the supervisor and assistant supervisors, shall be a member of the retirement system. If a person becomes a member of the Montana highway patrol after July 1, 1945, who was at any time before July 1, 1945, a member of the Montana highway patrol, he shall receive credit for any such service prior to July 1, 1945, upon complying with the provisions of this act.

**History:** En. Sec. 7, Ch. 37, L. 1945; amd. Sec. 8, Ch. 326, L. 1974.

#### Amendments

The 1974 amendment deleted "but excepting the present supervisor" after "assistant supervisors" in the first sentence; deleted from the end of the first sentence

"established by this act on July 1, 1945, and thereafter when first becoming a member of the Montana highway patrol." and deleted a second sentence reading "Contributions by members under this act shall commence with the first payroll after July 1, 1945"; and made minor changes in phraseology.

**31-209. Payments by contributors.** Every member shall be required to contribute into the account a sum equal to six and one-half per cent (6½%) of his monthly salary, which sum shall be deducted from his salary and deposited to his credit in the account.

**History:** En. Sec. 9, Ch. 37, L. 1945; amd. Sec. 5, Ch. 243, L. 1955; amd. Sec. 204, Ch. 147, L. 1963; amd. Sec. 2, Ch. 361, L. 1974.



**Amendments**

The 1963 amendment substituted "deposited to his credit in the account" for "credited to his account in the fund"; and substituted "account" for "fund" in two other places.

The 1974 amendment increased the member's contribution from 5% to 6½% and deleted a proviso that the member's payments and contributions to his credit cease on serving 25 years in the highway patrol.

**31-210. Contributions by the state of Montana.** The state of Montana shall annually contribute to the account an amount equal to fifteen per cent (15%) of the salaries, paid to the highway patrolmen who are covered by this account. This contribution shall be for the fiscal year beginning July 1, 1974, only, and a new rate shall be established by the 44th legislative assembly.

**History:** En. Sec. 10, Ch. 37, L. 1945; amd. Sec. 6, Ch. 243, L. 1955; amd. Sec. 205, Ch. 147, L. 1963; amd. Sec. 3, Ch. 361, L. 1974.

The 1974 amendment rewrote the section which formerly provided that the state would contribute annually 15% of all moneys received from the collection of the motor vehicle driver's license fee.

**Amendments**

The 1963 amendment substituted "account" for "fund."

**31-211. Retirement.** A member in service who has completed at least twenty-five (25) years of creditable service may retire on a service retirement allowance upon written application to the department setting forth at what time, not less than thirty (30) days nor more than ninety (90) days subsequent to the filing thereof, he desires to be retired.

**History:** En. Sec. 11, Ch. 37, L. 1945; amd. Sec. 9, Ch. 326, L. 1974.

**Amendments**

The 1974 amendment substituted "department" in this section for "board"; and made a minor change in phraseology.

**31-212. Repealed.****Repeal**

Section 31-212 (Sec. 12, Ch. 37, L. 1945; Sec. 7, Ch. 243, L. 1955), relating to

voluntary retirement after twenty years' service, was repealed by Sec. 7, Ch. 361, Laws of 1974.

**31-213. Retirement allowance.** Upon retirement from service a member shall receive a service retirement allowance which shall consist of the state annuity plus the member's annuity. The service retirement allowance shall be computed as follows: twenty (20) through twenty-five (25) years, two per cent (2%) of his final salary for each year of service; twenty-six (26) years and over, two per cent (2%) of his final salary for each year of service through the twenty-fifth plus one per cent (1%) of his final salary for each year of service past twenty-five (25).

**History:** En. Sec. 13, Ch. 37, L. 1945; amd. Sec. 4, Ch. 361, L. 1974.

member's annuity consisted of the actuarial equivalent of his contributions at retirement and the state annuity an amount which, when added thereto, provided a total of one-half the member's average final salary.

**Amendments**

The 1974 amendment rewrote the second sentence which provided that the

**31-214. Disability retirement allowance.****Evidence of Disability**

State highway patrolman was not entitled to disability retirement allowance

for total and permanent disability in light of evidence that claimant's condition did not prevent him from hunting, swimming

and bowling and evidence of four medical doctors that patrolman was not permanently disabled, notwithstanding evidence of osteopath that patrolman was totally

and permanently disabled in so far as being highway patrolman. State ex rel. Spear v. State Highway Patrol Retirement Board, 149 M 7, 422 P 2d 348.

**31-222. Nomination of beneficiary.** Every contributor may name his beneficiary by written designation duly acknowledged and filed with the department, and [to] change the beneficiary in like manner. Such designation and all changes must be filed with the department.

**History:** En. Sec. 22, Ch. 37, L. 1945; amd. Sec. 1, Ch. 107, L. 1967; amd. Sec. 10, Ch. 326, L. 1974.

and made a minor change in phraseology. The compiler inserted the brackets around the word "to" to indicate surplusage.

#### Amendments

The 1967 amendment deleted from the end of this section "up until, but not after, the time of retirement."

The 1974 amendment substituted "department" in two places for "board";

#### Effective Date

Section 2 of Ch. 107, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 21, 1967.

**31-223. Service in the armed forces of the United States.** (1) A member of the Montana highway patrol inducted into the armed forces of the United States, shall have the option: (a) to continue his payments into the fund; or (b) allow the department to make his payments for him during his military service, in which event he shall repay the fund the full amount of the payments upon his return to the Montana highway patrol, and these repayments must be made within two (2) years after his return to the patrol, however, a member's service in the armed forces of the United States shall be credited to and made a part of the member's service allowance.

(2) A member with fifteen (15) years or more of service with the Montana highway patrol may at any time prior to his retirement make a written election with the department to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits up to a maximum of five (5) years if he is not otherwise eligible to receive credit for this same service pursuant to subsection (1). To qualify this service he must contribute to the account the amount determined by the department to be due based on his compensation and normal contribution rate as of his sixteenth year and as many succeeding years as are required to qualify this service with interest from the date he becomes eligible for this benefit to the date he contributes. He may not qualify more of this service than he has service with the Montana highway patrol in excess of fifteen (15) years.

**History:** En. Sec. 23, Ch. 37, L. 1945; amd. Sec. 13, Ch. 243, L. 1955; amd. Sec. 11, Ch. 326, L. 1974; amd. Sec. 6, Ch. 361, L. 1974.

The compiler substituted "department" for "board" in two places in subsection (2).

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 326 and once by Ch. 361. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 326, Laws of 1974, substituted "department" for "board" in clause (b) in subsection (1).

Chapter 361, Laws of 1974, inserted the subsection designation "(1)" at the beginning of the first paragraph and added subsection (2).

**31-224. Fraud—correction of errors.** (1) (a) No person shall knowingly make any false statement, or shall falsify or permit to be falsified any record of the retirement system in an attempt to defraud the system. (b) Should a change in records fraudulently made or a mistake in records inadvertently made result in a contributor or beneficiary receiving more or less than he would have been entitled to had the records been correct, then, on the discovery of the error, the department shall correct the error and shall adjust the payments which shall be made to the contributor or annuitant in a manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

(2) A person violating any of the provisions of subsection (1) (a) of this section is guilty of a misdemeanor, and, upon conviction, shall be fined not exceeding one thousand dollars (\$1,000) or imprisoned not exceeding one (1) year, or both fined and imprisoned.

**History:** En. Sec. 24, Ch. 37, L. 1945; department" in subsection (1)(b) for  
amd. Sec. 12, Ch. 326, L. 1974. "board"; and made minor changes in  
phraseology.

#### Amendments

The 1974 amendment substituted "de-

**31-228. Optional retirement allowance.** Until the first payment on account of any retirement allowance is made and subject to the conditions that, if he die after retirement and within thirty (30) days from the date upon which his election or changed election is received at the office of the department, then the election is void, and the death shall be considered as that of a member before retirement. A member or a beneficiary may elect, or revoke, or change a previous election prior to the approval of the previous election to receive the actuarial equivalent of his retirement allowance as of the date of retirement, in a lesser retirement allowance, payable throughout life with one of the following options:

(1) Option 1. Upon his death, his lesser retirement allowance shall be continued throughout the life of and paid to the person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the department at the time of his retirement.

(2) Option 2. Upon his death, one-half of his lesser retirement allowance shall be continued throughout the life of and paid to the person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the department at the time of his retirement.

(3) Option 3. Such other benefit or benefits shall be paid, either to the beneficiary or to the other person or persons as he nominates, as, together with such lesser retirement allowance, are the actuarial equivalent of his retirement allowance, and shall be approved by the [department].

**History:** En. 31-228 by Sec. 14, Ch. 243,  
L. 1955; amd. Sec. 13, Ch. 326, L. 1974.

#### Compiler's Notes

The compiler substituted the bracketed word "department" at the end of subdivision (3) for "board."

#### Amendments

The 1974 amendment substituted "department" in the preliminary paragraph and in subdivisions (1) and (2) for "retirement board" and "board"; and made minor changes in style, punctuation and phraseology.



**31-230. Dormant savings accounts—transfer—subsequent re-entry to membership.** The department may, in its discretion, transfer the savings account of a member to the pension accumulation fund if the account has been dormant for a period of ten (10) years. However, no right of the member shall be jeopardized by the transfer, and the savings account shall be transferred to the member's name upon subsequent re-entry to membership.

**History:** En. Sec. 31-230 by Sec. 14, Ch. 243, L. 1955; amd. Sec. 14, Ch. 326, L. 1974.

#### Amendments

The 1974 amendment substituted "department" at the beginning of the section for "board"; and made minor changes in punctuation and phraseology.

**31-231. Cost of living.** (1) "Index" for the purposes of this section means, for any calendar year, that year's annual average consumer price index for urban wage earners and clerical workers, all items (1957-1959=100) compiled by the bureau of labor statistics, United States department of labor or successor agency.

(2) Effective July 1, 1974, every disability and survivorship retirement allowance then payable to a retired member or his beneficiary shall be increased by a percentage equal to one-half ( $\frac{1}{2}$ ) of the percentage increase in the index for 1973 from the index for the calendar year preceding the effective date of the retirement of the member or the date preceding the date of the deceased member whichever is more.

(3) Effective July 1, 1974, every service retirement allowance granted after twenty (20) years of service to the patrol and payable on July 1, 1974, shall be increased by a percentage equal to one-half ( $\frac{1}{2}$ ) of the percentage increase in the index for 1973 from the index for the calendar year preceding the effective date of retirement of the member.

(4) For the purposes of this section the minimum increase granted in subsections (2) and (3) above shall be the amount when added to the allowance payable on July 1, 1974, that shall total two hundred dollars (\$200) per month.

**History:** En. 31-231 by Sec. 6, Ch. 361, L. 1974.

men's retirement system; and repealing section 31-212, R. C. M. 1947.

#### Title of Act

An act amending sections 31-201, 31-209, 31-210, 31-213, and 31-223, R. C. M. 1947, to modify the Montana highway patrol-

#### Repealing Clause

Section 7 of Ch. 361, Laws 1974 read "Section 31-212, R. C. M. 1947, is repealed."

## TITLE 32—HIGHWAYS, BRIDGES AND FERRIES

- Chapter 2. Road taxes and bonds, Repealed—Section 12-109, Chapter 197, Laws of 1965.
3. Supervision of public highways, 32-317 to 32-321.
  6. Special road districts, abolishment, Repealed—Section 12-109, Chapter 197, Laws of 1965.
  9. Corrugated iron culverts, Repealed—Section 12-109, Chapter 197, Laws of 1965.
  10. Obstructions and encroachments, 32-1018 to 32-1022.
  11. Speed and traffic regulations, 32-1123.1 to 32-1123.12, 32-1124 to 32-1126, 32-1127.1 to 32-1127.10, 32-1128, 32-1130, 32-1131.
  12. Uniform Accident Reporting Act, 32-1208, 32-1213.
  13. Good roads day, Repealed—Section 12-109, Chapter 197, Laws of 1965.
  15. Ferries, 35-1502.
  16. Department of highways—director—powers and duties, 32-1627, 32-1628, 32-1631.1, 32-1632 to 32-1641.
  17. National defense highway program, 32-1702, 32-1703.
  18. Stock lane law, Repealed—Section 12-109, Chapter 197, Laws of 1965.
  19. Montana toll bridge authority, Repealed—Section 12-109, Chapter 197, Laws of 1965.
  20. Controlled access highways, Repealed—Section 12-109, Chapter 197, Laws of 1965.
  21. Uniform act regulating traffic on highways, 32-2124.3 to 32-2124.5, 32-2133, 32-2134, 32-2134.1 to 32-2134.3, 32-2137, 32-2142 to 32-2142.3, 32-2143.1, 32-2143.2, 32-2144, 32-2144.1 to 32-2144.7, 32-2145 to 32-2149, 32-2150.3, 32-2157, 32-2158, 32-2163, 32-2170, 32-2173, 32-2174, 32-2177, 32-2192, 32-2195, 32-2197, 32-2198, 32-21-102, 32-21-105, 32-21-105.1, 32-21-113, 32-21-122, 32-21-130, 32-21-132, 32-21-143.1 to 32-21-143.4, 32-21-149, 32-21-149.1, 32-21-150.1 to 32-21-150.3, 32-21-155.1, 32-21-163, 32-21-164, 32-21-166 to 32-21-180.
  22. Highway code—general provisions, 32-2201 to 32-2203.
  23. Classification of highways, 32-2301, 32-2302.
  24. Assent to federal aid—state highway commission, powers and duties, 32-2401, 32-2402, 32-2404, 32-2406 to 32-2416, 32-2419 to 32-2429.
  25. State highways engineer and other employees, 32-2504, 32-2505.
  26. Distribution and apportionment of highway construction funds, 32-2601, 32-2603 to 32-2623.
  27. Montana toll bridge authority, Repealed—Section 209, Chapter 316, Laws of 1974.
  28. Board of county commissioners responsibility for county roads, 32-2801 to 32-2803, 32-2805 to 32-2820.
  29. Board of county commissioners responsibility for bridges and ferries, 32-2901 to 32-2907.
  30. County road superintendent, 32-3001 to 32-3007.
  31. Local improvement districts, 32-3101 to 32-3131.
  32. State vehicle fees—payment, expiration and disposition, 32-3201 to 32-3206.
  33. Additional truck, trailer and bus fees—sales tax on vehicles—excess weight penalties, 32-3301 to 32-3310, 32-3312 to 32-3320.
  34. Fees for drive-away or tow-away transporters, 32-3401 to 32-3408.
  35. Bond issues for state toll bridges, Repealed—Section 209, Chapter 316, Laws of 1974.
  36. County tax levies for road and bridge construction, 32-3601 to 32-3605.
  37. Local use of registration and other vehicle fees, 32-3701 to 32-3707.
  38. County road and bridge bonds, 32-3801 to 32-3806.
  39. Acquisition and disposition of property by state, 32-3901 to 32-3918, 32-3920, 32-3923 to 32-3931.
  40. Acquisition and disposition of property by county, 32-4001 to 32-4018.
  41. Contracts of state highway commission, 32-4101 to 32-4103.
  42. Contracts of counties and local improvement districts, 32-4201 to 32-4207.
  43. Control of access, 32-4301 to 32-4303, 32-4305 to 32-4311.

44. Good roads day—obstructions, encroachments and debris on highways, 32-4401, 32-4403 to 32-4410.
45. Junkyards along roads, 32-4513 to 32-4523.
46. Traffic safety program, 32-4601, 32-4602, 32-4605 to 32-4607.
47. Outdoor advertising along highways, 32-4715 to 32-4728.
48. Excavations in public streets, 32-4801 to 32-4808.

## CHAPTER 1—HIGHWAYS—DEFINITIONS AND CLASSIFICATIONS

### 32-101. (1610) Repealed.

#### Repeal

Section 32-101 (Sec. 1, Ch. 72, L. 1913; Sec. 1, Ch. 141, L. 1915; Sec. 1, Ch. 172,

L. 1917), relating to title of act, was repealed by Sec. 209, Ch. 316, Laws of 1974.

### 32-102 to 32-107. (1611 to 1616) Repealed.

#### Repeal

These sections (Sec. 10, p. 106, L. 1874; Sec. 2600, Pol. C. 1895; Secs. 1, 3, 6, Ch. 44, L. 1903; Secs. 2 to 7, Ch. 72, L. 1913; Secs. 2 to 7, Ch. 141, L. 1915; Secs. 2 to 7, Ch. 172, L. 1917; Sec. 1, Ch. 247, L. 1959),

relating to definitions and classifications of highways, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-2203, 32-2301, 32-2808, and 32-4014.

## CHAPTER 2—ROAD TAXES AND BONDS

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

### 32-201 to 32-208. (1617 to 1620) Repealed.

#### Repeal

These sections (Sec. 19, p. 110, L. 1874; Sec. 1, p. 119, L. 1885; Secs. 1796, 1837, 1838, 5th Div. Comp. Stat. 1887; Secs. 1, 3, p. 176, L. 1897; Sec. 1, p. 69, L. 1899; Secs. 11, 26, 27, Ch. 44, L. 1903; Secs. 1 to 4, Ch. 2, Ch. 72, L. 1913; Secs. 1 to 4, Ch. 2, Ch. 141, L. 1915; Secs. 1 to 4, Ch. 2, Ch.

172, L. 1917; Sec. 1, Ch. 2, L. 1933; Secs. 1 to 4, Ch. 69, L. 1945; Sec. 1, Ch. 145, L. 1947; Sec. 1, Ch. 149, L. 1947), relating to road taxes and bonds, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-3601 to 32-3605 and 32-3801.

## CHAPTER 3—SUPERVISION OF PUBLIC HIGHWAYS

Section 32-317 to 32-321. [Transferred.]

### 32-301. (1621) Repealed.

#### Repeal

Section 32-301 (Sec. 1, Ch. 3, Ch. 141, L. 1915; Sec. 1, Ch. 3, Ch. 172, L. 1917),

relating to highway proceedings being included in minutes of board, was repealed by Sec. 209, Ch. 316, Laws of 1974.

### 32-302 to 32-314. (1622 to 1632) Repealed.

#### Repeal

These sections (Sec. 12, p. 119, L. 1873; Sec. 24, p. 113, L. 1874; Sec. 4, p. 118, L. 1885; Secs. 1801, 1802, 1805, 1834, 5th Div. Comp. Stat. 1887; Secs. 2632, 2695, 2700, 2701, 2710, 2711, 2720, 2740, 2741, Pol. C. 1895; Secs. 10, 33 to 36, 51, 52, Ch. 44, L. 1903; Secs. 1, 2, Ch. 76, L. 1905; Secs. 2 to 13, Ch. 3, Ch. 72, L. 1913; Secs. 2 to 13, Ch. 3, Ch. 141, L. 1915; Sec. 1, Ch. 106, L. 1917; Secs. 2 to 12, Ch. 3, Ch. 172, L. 1917; Secs. 1 to 4, Ch. 15, Ex. L. 1919; Sec. 1, Ch. 128, L. 1925;

Secs. 1, 2, Ch. 102, L. 1927; Secs. 1, 2, Ch. 21, L. 1929; Sec. 1, Ch. 59, L. 1929; Sec. 1, Ch. 81, L. 1929; Sec. 1, Ch. 176, L. 1929; Sec. 1, Ch. 179, L. 1931; Sec. 1, Ch. 102, L. 1947; Sec. 1, Ch. 84, L. 1953; Sec. 1, Ch. 109, L. 1955; Sec. 1, Ch. 116, L. 1957; Sec. 1, Ch. 128, L. 1959; Sec. 2, Ch. 260, L. 1965), relating to the functions of the county commissioners, county surveyors, and road supervisors with respect to roads, were repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2801 to 32-3007.



**32-315. (1633) Repealed.****Repeal**

Section 32-315 (Sec. 5, Ch. 15, Ex. L. 1919), relating to declaration of law as

emergency measure, was repealed by Sec. 209, Ch. 316, Laws of 1974.

**32-316. (1634) Repealed.****Repeal**

This section (Sec. 2742, Pol. C. 1895; Sec. 53, Ch. 44, L. 1903; Sec. 3, Ch. 76, L. 1905; Sec. 14, Ch. 3, Ch. 72, L. 1913; Sec. 14, Ch. 3, Ch. 141, L. 1915; Sec. 13,

Ch. 3, Ch. 172, L. 1917), relating to records of county commissioners relating to roads, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-2805.

**32-317 to 32-321. [Transferred.]****Compiler's Notes**

Sections 2 to 4, Ch. 316, Laws of 1974

renumbered these sections as secs. 32-2816 to 32-2820.

## CHAPTER 4—ESTABLISHING, ALTERING AND VACATING PUBLIC HIGHWAYS

**32-401 to 32-413. (1635 to 1647) Repealed.****Repeal**

These sections (Secs. 2750, 2751, 2760 to 2763, 2765 to 2768, Pol. C. 1895; Secs. 55, 56, 65 to 68, 70, 72, 73, pages 35, 38, 39, L. 1901; Secs. 54, 55, 63 to 66, 68 to 71, Ch. 44, L. 1903; Secs. 1 to 16, Ch. 4, Ch. 72, L. 1913; Secs. 1 to 16, Ch. 4, Ch. 141, L. 1915; Secs. 1 to 13, Ch. 4, Ch. 172,

L. 1917; Secs. 1, 2, Ch. 4, Ex. L. 1919; Sec. 1, Ch. 107, L. 1935; Sec. 1, Ch. 123, L. 1961), relating to the establishment, alteration and discontinuance of highways, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-4002 to 32-4013.

**32-414. (1648) Repealed.****Repeal**

Section 32-414 (Sec. 2769, Pol. C. 1895; Sec. 74, p. 39, L. 1901; Sec. 72, Ch. 44, L. 1903; Sec. 17, Ch. 4, Ch. 72, L. 1913;

Sec. 17, Ch. 4, Ch. 141, L. 1915; Sec. 14, Ch. 4, Ch. 172, L. 1917), relating to removal of fences, was repealed by Sec. 209, Ch. 316, Laws of 1974.

**32-415, 32-416. (1649, 1650) Repealed.****Repeal**

These sections (Secs. 2770, 2771, Pol. C. 1895; Secs. 75, 76, p. 40, L. 1901; Secs. 73, 74, Ch. 44, L. 1903; Secs. 18, 19, Ch. 4, Ch. 72, L. 1913; Secs. 18, 19, Ch. 4, Ch. 141, L. 1915; Secs. 15, 16, Ch. 4, Ch. 172,

L. 1917), relating to the laying out and changing of highways along section or subdivision lines, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4009.

**32-417. (1651) Repealed.****Repeal**

Section 32-417 (Sec. 20, Ch. 4, Ch. 72, L. 1913; Sec. 20, Ch. 4, Ch. 141, L. 1915; Sec. 17, Ch. 4, Ch. 172, L. 1917), relating

to defects as not invalidating proceedings, was repealed by Sec. 209, Ch. 316, Laws of 1974.

## CHAPTER 5—LOCAL IMPROVEMENT DISTRICTS

**32-501 to 32-507. (1676 to 1682) Repealed.****Repeal**

These sections (Secs. 1 to 7, Ch. 12, Ch. 172, L. 1917), relating to construction and improvement of highways through assess-

ment districts, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-3101 to 32-3107 and 32-3110.

**32-508. (1683) Repealed.****Repeal**

Section 32-508 (Sec. 8, Ch. 12, Ch. 172, L. 1917), relating to determination of

amount of damages by condemnation proceedings, was repealed by Sec. 209, Ch. 316, Laws of 1974.

**32-509 to 32-526. (1684 to 1701) Repealed.****Repeal**

These sections (Secs. 9 to 26, Ch. 12, Ch. 172, L. 1917; Sec. 1, Ch. 13, L. 1925), relating to construction and improvement of highways through local improvement

districts, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-3108 to 32-3131.

**32-527. (1702) Repealed.****Repeal**

Section 32-527 (Sec. 27, Ch. 12, Ch. 172, L. 1917), relating to construction of

chapter, was repealed by Sec. 209, Ch. 316, Laws of 1974.

**CHAPTER 6—SPECIAL ROAD DISTRICTS, ABOLISHMENT**

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

**32-601, 32-602. Repealed.****Repeal**

These sections (Secs. 1, 3, Ch. 35, L. 1939), abolishing special road districts,

were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

**CHAPTER 7—PUBLIC BRIDGES****32-701 to 32-711. (1703 to 1713) Repealed.****Repeal**

These sections (Secs. 2810 to 2814, Pol. C. 1895; Secs. 75 to 79, Ch. 44, L. 1903; Sec. 1, Ch. 9, L. 1909; Secs. 1 to 5, Ch. 5, Ch. 72, L. 1913; Secs. 1 to 5, Ch. 5, Ch. 141, L. 1915; Secs. 1 to 6, Ch. 63, L. 1917; Sec. 1, Ch. 144, L. 1931; Sec. 1,

Ch. 144, L. 1947; Sec. 1, Ch. 25, L. 1951; Sec. 1, Ch. 172, L. 1963), relating to the construction and maintenance of public bridges, were repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2901 to 32-2907 and 32-3602 to 32-3604.

**32-712. (1714) Repealed.****Repeal**

Section 32-712 (Sec. 7, Ch. 63, L. 1917), relating to construction of act with re-

spect to cities and towns, was repealed by Sec. 209, Ch. 316, Laws of 1974.

**32-713 to 32-715. Repealed.****Repeal**

These sections (Secs. 1 to 3, Ch. 106, L. 1955; Secs. 1, 2, Ch. 35, L. 1957), relating to state construction and reconstruction

of bridges, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-2604.

**32-716. Repealed.****Repeal**

Section 32-716 (Sec. 4, Ch. 106, L. 1955; Sec. 3, Ch. 35, L. 1957), relating to deduction of allotment from future reg-

ular apportionments to the particular financial district, was repealed by Sec. 209, Ch. 316, Laws of 1974.

## CHAPTER 9—CORRUGATED IRON CULVERTS

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

## 32-901 to 32-905. (1721 to 1725) Repealed.

**Repeal**

These sections (Secs. 1 to 5, Ch. 143, L. 1919), relating to corrugated iron cul-

verts used in road construction, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

## CHAPTER 10—OBSTRUCTIONS AND ENCROACHMENTS

Sections 32-1018 to 32-1022. [Transferred.]

## 32-1001. (1726) Repealed.

**Repeal**

Section 32-1001 (Sec. 2621, Pol. C. 1895; Sec. 7, Ch. 44, L. 1903; Sec. 1, Ch. 6, Ch. 72, L. 1913; Sec. 1, Ch. 6, Ch. 141,

L. 1915), relating to construction of and damage to sidewalks, was repealed by Sec. 209, Ch. 316, Laws of 1974.

## 32-1002 to 32-1017. (1727 to 1741.1) Repealed.

**Repeal**

These sections (Sec. 2734, Pol. C. 1895; Secs. 50, 90, Ch. 44, L. 1903; Secs. 14 to 16, Ch. 6, Ch. 72, L. 1913; Secs. 2 to 16, Ch. 6, Ch. 141, L. 1915; Sec. 1, Ch. 74, L. 1929; Sec. 1, Ch. 237, L. 1959; Sec. 1,

Ch. 176, L. 1965), relating to encroachments and obstructions on highways, were repealed by Sec. 158, Ch. 263, Laws 1955; Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-21-111, 32-4402 to 32-4410.

## 32-1018 to 32-1022. [Transferred.]

**Compiler's Notes**

Sections 7 to 11, Ch. 316, Laws of 1974

renumbered these sections as secs. 32-21-176 to 32-21-180.

## CHAPTER 11—SPEED AND TRAFFIC REGULATIONS

Section 32-1123.1.	Standards of maximum dimensions, weights, etc.
32-1123.2.	Definitions.
32-1123.3.	Width.
32-1123.4.	Height.
32-1123.5.	Length.
32-1123.6.	Permissible loads.
32-1123.7.	Special permits.
32-1123.8.	Measuring distance between axles.
32-1123.9.	Reduction under special circumstances.
32-1123.10.	Operation without special permits.
32-1123.11.	Federal law.
32-1123.12.	Authority of local authorities.
32-1124.	Violation, a misdemeanor.
32-1125.	Penalties.
32-1126.	Officers may weigh vehicles and require removal of excessive loads—badges and uniforms of highway employees.
32-1127.1.	Permits for excess size and weight.
32-1127.2.	Special permits—discretion of issuer—conditions.
32-1127.3.	Special permits—fees.
32-1127.4.	Self-propelled vehicles.
32-1127.5.	Other fees—exemption.
32-1127.6.	Permits issued to governmental entities.
32-1127.7.	Special permits—misrepresentations and violations.
32-1127.8.	Display of permit.
32-1127.9.	Confiscation—action by commission.
32-1127.10.	Deposit of fees.



- 32-1128. When state or local road authorities may restrict right to use highways  
 32-1130. Penalties for misdemeanor.  
 32-1131. Speed and traffic regulations—disposition of fines.

### 32-1112. (1748) Liability of owner for negligence of driver.

#### Gross Negligence

Despite record supporting conclusion that consumption of alcohol and its effect on driver's ability caused accident, question of driver's gross negligence was proper jury determination and precluded judgment for guest on directed verdict or notwithstanding the verdict. *Hoffman v. Herzog*, 158 M 296, 491 P 2d 713.

Driver of automobile who was traveling ten miles over the posted speed limit

when approaching a bridge and who, upon realizing that a vehicle was stopped in front of her at the other end of the bridge, swerved into the oncoming lane of traffic to avoid the vehicle, causing her own car to collide head on with an automobile traveling in the opposite direction, was guilty of gross negligence and was liable to a "guest passenger" under this section. *Rusk v. Skillman*, — M —, 514 P 2d 587.

### 32-1113. (1748.1) Owner or operator of vehicle released, etc.

#### Intoxicated Driver

Question was for jury whether passenger injured in accident had assumed risk of going into car driven by man who had had several drinks or whether driver was grossly negligent; passenger has burden of showing that driver was grossly negligent which is defined as "failure to use slight care." *Heen v. Tiddy*, 151 M 265, 442 P 2d 434.

#### Jury Question

The question of gross negligence was properly submitted to the jury on evidence that defendant approached a known 90-degree turn at a speed of 35 to 40 miles per hour on a rough road despite warnings from the plaintiff guest and another passenger to slow down. *Carter v. Miller*, 140 M 426, 372 P 2d 421, 425.

The question of whether the action of a second defendant is an independent intervening cause in one for the jury and their finding will not be disturbed when there is

substantial evidence to support it. *Holland v. Konds*, 142 M 536, 385 P 2d 272, 6 ALR 3d 824.

#### "Passenger for Hire"

A guest was not made a "passenger for hire" by virtue of having paid five dollars toward the expense of gasoline to be purchased during the trip where no testimony was introduced to indicate that contribution was anything more than an incidental, friendly gratuity rather than legal consideration for services to be rendered and where it appeared that plaintiff had accepted an invitation to accompany defendant on a trip. *Rusk v. Skillman*, — M —, 514 P 2d 587.

#### Pleading of Negligence

A general allegation of negligence in the complaint is sufficient to raise the issue of gross negligence. *Carter v. Miller*, 140 M 426, 372 P 2d 421, 424.

### 32-1114. (1748.2) Assumption of risk by guest in motor vehicle, when.

#### Passenger for Hire

Where a driver acting within the scope of his employment is carrying a passenger in a motor vehicle for the direct benefit of the driver's employer, such passen-

ger is not a "guest passenger" who assumes the ordinary negligence of the driver, but a passenger for hire to whom this section does not apply. *Kaplan v. Hauf*, 158 M 359, 492 P 2d 213.

### 32-1115. (1748.3) Imputation of ordinary negligence to guest.

#### References

*Holland v. Konda*, 142 M 536, 385 P 2d 272, 6 ALR 3d 824.

### 32-1117, 32-1118. (1748.5, 1748.6) Repealed.

#### Repeal

Sections 32-1117 and 32-1118 (Secs. 1, 2, Ch. 101, L. 1923), relating to size of

sleigh runners and penalty for violating act, were repealed by Sec. 209, Ch. 316, Laws of 1974.

**32-1120 to 32-1123. (1750 to 1751.1) Repealed.****Repeal**

Sections 32-1120 to 32-1123 (Secs. 88, 89, Ch. 44, L. 1903; Secs. 7, 8, Ch. 8, Ch. 72, L. 1913; Secs. 7, 8, Ch. 8, Ch. 141, L. 1915; Sec. 1, Ch. 171, L. 1931; Secs. 1, 2, Ch. 123, L. 1947; Sec. 1, Ch. 73, L. 1953; Sec. 1, Ch. 250, L. 1955; Sec. 1,

Ch. 221, L. 1959; Sec. 7, Ch. 243, L. 1961; Sec. 1, Ch. 2, Ex. L. 1967; Sec. 1, Ch. 188, L. 1969; Sec. 1, Ch. 462, L. 1973), relating to regulation of size and weight of vehicles on public highways, were repealed by Sec. 209, Ch. 316, Laws of 1974.

**32-1123.1. Standards of maximum dimensions, weights, etc.** The standards provided for in sections 32-1123.2 through 32-1123.11 govern the maximum dimensions, weights, and other characteristics of motor vehicles operating over the highways in the state to the exclusion of other standards or other requirements respecting the subject matter.

**History:** En. 32-1123.1 by Sec. 12, Ch. 316, L. 1974.

**Title of Act**

An act for the codification and general revision of the laws relating to the department of highways.

**32-1123.2. Definitions.** In sections 32-1123.1 through 32-1123.11, the following definitions apply:

- (1) Vehicle—as defined in section 32-2102.
- (2) Motor vehicle—as defined in section 32-2102.
- (3) Truck-tractor—as defined in section 32-2103.
- (4) Truck—as defined in section 32-2104.
- (5) Trailer—as defined in section 32-2105.
- (6) Semitrailer—as defined in section 32-2105.
- (7) Dolly or converter gear—a device consisting of one (1) or two (2) axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, thereby converting a semitrailer into a trailer.

**History:** En. 32-1123.2 by Sec. 13, Ch. 316, L. 1974.

**32-1123.3. Width.** A vehicle, unladen or with load, may not have a total outside width in excess of one hundred two (102) inches, except buses which may have a total outside width not to exceed one hundred two (102) inches. This bus width is allowed only on paved highways twenty (20) feet or more in width. This restriction does not apply to an implement of husbandry moved or propelled upon the highway during daylight hours for a distance of not more than one hundred (100) miles, if the movement is incidental to the farming operations of the owner of the implement of husbandry. If the implement of husbandry has a width in excess of twelve (12) feet, it shall be preceded by flagmen escorts for the purpose of warning other highway users; provided, however, that this restriction does not apply to dual wheel tractors under fifteen (15) feet overall width which are used in farming operations. The rear of such an implement of husbandry shall properly display lights which meet standard requirements in section 32-21-134, R. C. M. 1947. However, if the highway passes through a hazardous area, such implements of husbandry must be preceded and followed by flagmen escorts.

**History:** En. 32-1123.3 by Sec. 14, Ch. 316, L. 1974.

**32-1123.4. Height.** A vehicle, unladen or with load, may not exceed a height of thirteen (13) feet, six (6) inches.

History: En. 32-1123.4 by Sec. 15, Ch. 316, L. 1974.

**32-1123.5. Length.** (1) A single truck, unladen or with load, may not have an overall length, inclusive of front and rear bumpers, in excess of thirty-five (35) feet.

(2) A single bus, unladen or with load, may not have an overall length, inclusive of front and rear bumpers, in excess of forty (40) feet.

(3) A combination of truck and trailer, tractor and semitrailer, tractor-semitrailer-full trailer, or tractor-semitrailer-semitrailer converted to a trailer by use of a dolly equipped with a fifth wheel, may not have an overall length, inclusive of front and rear bumpers, in excess of sixty (60) feet. If the combination consists of more than two (2) units, the rear units of the combination shall be equipped with breakaway brakes.

(4) A motor vehicle may not tow more than one (1) motor vehicle, and a motor vehicle may not draw more than two (2) motor vehicles attached to it by the dual saddle-mount method, that is by mounting the front wheels of one (1) vehicle on the bed of another, leaving only the rear wheels of the vehicle in contact with the roadway, nor may this combination have an overall length, inclusive of front and rear bumpers, in excess of sixty (60) feet.

(5) A passenger vehicle or truck of less than two thousand (2,000) pounds "manufacturers' rated capacity" may not tow more than one (1) trailer or semitrailer, nor may this combination have an overall length, inclusive of front and rear bumpers, in excess of sixty (60) feet.

History: En. 32-1123.5 by Sec. 16, Ch. 316, L. 1974.

**32-1123.6. Permissible loads.** (1) An axle may not carry a load in excess of eighteen thousand (18,000) pounds. An axle load is defined as the total load transmitted to the road by all wheels whose centers are included between two (2) parallel transverse vertical planes forty (40) inches apart, extending across the full width of the vehicle.

(2) (a) The gross weight of a group of axles of a vehicle or combination of vehicles, if the distance between first and last axles of a group of axles is eighteen (18) feet or less, and the gross weight of a vehicle if the distance between the first and last axles of all the axles of the vehicle is eighteen (18) feet or less, may not exceed that set forth in the following table of weights:



DISTANCE IN FEET BETWEEN  
THE FIRST AND LAST AXLES  
OF ANY GROUP OF AXLES OF  
ANY VEHICLE OR COMBINATION  
OF VEHICLES OR BETWEEN  
THE FIRST AND LAST AXLES OF  
ALL OF THE AXLES OF  
ANY VEHICLE.

MAXIMUM GROSS WEIGHT, IN  
POUNDS, OF ANY GROUP OF  
AXLES, OF ANY VEHICLE OR  
COMBINATION OF VEHICLES,  
OR OF ANY VEHICLE.

4	32,000
5	32,000
6	32,200
7	32,900
8	33,600
9	34,300
10	35,000
11	35,700
12	36,400
13	37,100
14	43,200
15	44,000
16	44,800
17	45,600
18	46,400

(b) The gross weight of a vehicle or combination of vehicles, if the distance between the first and last axles of the vehicle or combination of vehicles is more than eighteen (18) feet, may not exceed that set forth in the following table of weights:

DISTANCE IN FEET BETWEEN  
THE FIRST AND LAST  
AXLES OF ALL THE AXLES  
OF A VEHICLE OR COMBINA-  
TION OF VEHICLES.

MAXIMUM GROSS WEIGHT, IN  
POUNDS, OF ANY VEHICLE OR  
COMBINATION OF VEHICLES.

18	46,400
19	47,200
20	48,000
21	48,800
22	49,600
23	50,400
24	51,200
25	55,250
26	56,100
27	56,950
28	57,800
29	58,650
30	59,500
31	60,350
32	61,200
33	62,050
34	62,900
35	63,750
36	64,600

DISTANCE IN FEET BETWEEN  
THE FIRST AND LAST  
AXLES OF ALL THE AXLES  
OF A VEHICLE OR COMBINA-  
TION OF VEHICLES.

MAXIMUM GROSS WEIGHT, IN  
POUNDS, OF ANY VEHICLE OR  
COMBINATION OF VEHICLES.

37	65,450
38	66,300
39	68,000
40	70,000
41	72,000
42	73,280
43	73,280
44	73,280
45	73,280
46	73,280
47	73,280
48	73,280
49	73,280
50	73,280
51	73,280
52	73,600
53	74,400
54	75,200
55	76,000
56	76,400
57	76,800

History: En. 32-1123.6 by Sec. 17, Ch.  
316, L. 1974.

#### DECISIONS UNDER FORMER LAW

##### Mandatory Nature of Penalty

Once court determined that defendant was driving logging truck upon highways of state when gross weight exceeded maximum gross weight allowed by statute by some 28,000 pounds, court had no choice but to levy additional fine of \$1,000 under penalty section of chapter; penalty is in addition to the other penalties provided

by statute, is obligatory upon judge, is not violation of double jeopardy provision of constitution and does not violate statute providing that when action is punishable under different provisions of code, punishment may be had under only one of them. State ex rel. Oleson v. District Court, Eleventh Judicial Dist., 151 M 12, 438 P 2d 560.

**32-1123.7. Special permits.** The department of highways may, based on evaluation of safety, highway capacity, and economics of highway maintenance and vehicle operation, authorize by special permit at a fee of ten dollars (\$10), specifying highway routings, the operation of a vehicle having two (2) but not more than nine (9) axles if the maximum single axle load is twenty thousand (20,000) pounds and if no two (2) consecutive axles more than forty (40) inches or less than ninety-six (96) inches apart carry a load in excess of thirty-four thousand (34,000) pounds. For purposes of this section, axles forty (40) inches or less apart are considered as a single axle. The maximum gross weight allowed on a vehicle or combination so authorized by this special permit shall be determined by the formula  $W \text{ equals } 500 (LN/N \text{ minus } 1 \text{ plus } 12N \text{ plus } 36)$  in which W equals gross weight, L equals wheel base in feet,

and N equals number of axles. However, the maximum allowable gross weight on a group of axles may not exceed the following values:

2 axles	40,000 pounds
3 axles	60,000 pounds
4 axles	80,000 pounds
5 axles	85,500 pounds
6 axles	90,000 pounds
7 axles	105,500 pounds
8 axles	105,500 pounds
9 axles	105,500 pounds

This section does not apply to highways which are a part of the national system of interstate and defense highways (as referred to in section 127 of Title 23, United States Code) when application of this section would prevent this state from receiving federal funds for highway purposes.

History: En. 32-1123.7 by Sec. 18, Ch. 316, L. 1974.

**32-1123.8. Measuring distance between axles.** The distance between axles shall be measured to the nearest foot. When a fractional measurement is exactly one-half ( $\frac{1}{2}$ ) foot, the next larger whole number shall be used.

History: En. 32-1123.8 by Sec. 19, Ch. 316, L. 1974.

**32-1123.9. Reduction under special circumstances.** The maximum axle and axle group loads stated in section 32-1123.6 are subject to reasonable reduction in the discretion of the department during periods when road subgrades have been weakened by water saturation or other causes.

History: En. 32-1123.9 by Sec. 20, Ch. 316, L. 1974.

**32-1123.10. Operation without special permits.** The operation of vehicles or combinations of vehicles having dimensions or weights in excess of the maximum limits specified in sections 32-1123.1 through 32-1123.9 is permitted only if authorized by special permit issued by the department of highways or its agents, or the highway patrol.

History: En. 32-1123.10 by Sec. 21, Ch. 316, L. 1974.

**32-1123.11. Federal law.** Sections 32-1123.1 through 32-1123.10 do not authorize, without a permit issued as provided by law, the operation of a combination of vehicles having a gross weight, axle load or size in excess of that authorized in those sections, or the operation of a combination of vehicles on the national system of interstate and defense highways having a gross weight or size in excess of that permitted by law in this state before July 1, 1956, or by federal law or regulation in excess thereof, which is adopted. If federal law allows establishment of size and



weight limits in excess of those permitted in those sections, without penalty or denial of federal funds for highway purposes, the department of highways may, by permit designating highway routing, authorize the movement on highways under its jurisdiction of vehicles or combinations of vehicles of a size or weight in excess of the limits provided for in those sections, but within the limits necessary to qualify for federal aid highway funds.

History: En. 32-1123.11 by Sec. 22,  
Ch. 316, L. 1974.

**32-1123.12. Authority of local authorities.** A local authority may not alter the limitations provided in sections 32-1123.1 through 32-1123.11, or substitute other limitations or requirements, except as provided in section 32-1128.

History: En. 32-1123.12 by Sec. 23,  
Ch. 316, L. 1974.

**32-1124. Violation, a misdemeanor.** (1) It is a misdemeanor for a person, firm, or corporation to violate any provision of sections 32-1123.1 through 32-1123.11.

(2) However, the operator of a vehicle which is loaded at a location where no scale exists may move the vehicle over the highways to the first open state scale without violating those sections and incurring the penalties provided by section 32-1125. The origin of movement shall be at such a distance from a scale that the operator could not have been reasonably expected to check the weight of the vehicle during the loading. The operator shall exhibit shipping papers or other written evidence of the location at which the vehicle was loaded. The operator shall move the vehicle toward its destination over the most direct highway route and stop at the first open state scale, permanent or portable. The load must be adjusted or reduced to conform to the size and weight limitations of the vehicle before the vehicle is moved from the point of weighing.

History: En. Sec. 3(a), Ch. 123, L. 1947; provision of sections 32-1123.1 through  
amd. Sec. 2, Ch. 243, L. 1961; amd. Sec. 32-1123.11" in subsection (1) for "any of  
24, Ch. 316, L. 1974. the provisions of section 32-1123"; added  
subsection (2); and made minor changes  
in phraseology, punctuation and style.

#### Amendments

The 1974 amendment substituted "any

**32-1125. Penalties.** (1) A person, firm or corporation convicted of violating sections 32-1123.1 through 32-1123.11 shall be punished by a fine of not less than fifteen dollars (\$15) nor more than fifty dollars (\$50), or by imprisonment in the county or municipal jail for not less than five (5) days nor more than twenty-five (25) days. In addition, a person, firm or corporation convicted of operating a motor vehicle upon the public highways of this state with weight upon a wheel, axle or group of axles or upon more than one (1) of them greater than the maximum permitted by sections 32-1123.1 through 32-1123.11, shall be fined, in addition to other penalties provided by law for the offense, the following amounts:

(a) Fifteen dollars (\$15) for any excess weight up to and including two thousand (2,000) pounds.

(b) Twenty-five dollars (\$25) for any excess weight more than two thousand (2,000) pounds and less than four thousand and one (4,001) pounds.

(c) Thirty-five dollars (\$35) for any excess weight more than four thousand (4,000) pounds and less than six thousand and one (6,001) pounds.

(d) Fifty dollars (\$50) for any excess weight more than six thousand (6,000) pounds and less than eight thousand and one (8,001) pounds.

(e) Eighty dollars (\$80) for any excess weight more than eight thousand (8,000) pounds and less than ten thousand and one (10,001) pounds.

(f) One hundred ten dollars (\$110) for any excess weight more than ten thousand (10,000) pounds and less than twelve thousand and one (12,001) pounds.

(g) One hundred and fifty dollars (\$150) for any excess weight more than twelve thousand (12,000) pounds and less than fourteen thousand and one (14,001) pounds.

(h) Two hundred dollars (\$200) for any excess weight more than fourteen thousand (14,000) pounds and less than sixteen thousand and one (16,001) pounds.

(i) Two hundred fifty dollars (\$250) for any excess weight more than sixteen thousand (16,000) pounds and less than eighteen thousand and one (18,001) pounds.

(j) Three hundred dollars (\$300) for any excess weight more than eighteen thousand (18,000) pounds and less than twenty thousand and one (20,001) pounds.

(k) Five hundred dollars (\$500) for any excess weight more than twenty thousand (20,000) pounds and less than twenty-five thousand and one (25,001) pounds.

(l) One thousand dollars (\$1,000) for any excess weight more than twenty-five thousand (25,000) pounds.

(2) A complaint filed and a summons or notice to appear issued pertaining to a violation of the gross weight regulations in sections 32-1123.1 through 32-1123.11, shall specify the amount of the overweight, which the defendant is alleged to have had upon the vehicle or combination of vehicles.

(3) All fines and forfeitures shall be remitted monthly by the county treasurer to the state treasurer for deposit in the state general fund.

**History:** En. Sec. 3(b), Ch. 123, L. 1947; amd. Sec. 3, Ch. 243, L. 1961; amd. Sec. 25, Ch. 316, L. 1974.

#### **Amendments**

The 1974 amendment inserted "convicted of violating sections 32-1123.1 through 32-1123.11" in the first sentence of subsection (1); deleted "excepting as

provided below" from the first sentence of subsection (1); substituted "sections 32-1123.1 through 32-1123.11" for "section 32-1123 and acts amendatory thereto" in the second sentence of subsection (1) and for "this act" in subsection (2); and made minor changes in phraseology, punctuation and style.

**32-1126. (1751.5) Officers may weigh vehicles and require removal of excessive loads—badges and uniforms of highway employees. (1) A**

peace officer, officer of the highway patrol, or employee of the department may weigh any vehicle regulated by sections 32-1123.1 through 32-1123.11, either by means of portable or stationary scales, and may require that the vehicle be driven to the nearest scales if those scales are within two (2) miles. That person may then require the driver to unload immediately that portion of the load necessary to decrease the weight of the vehicle to conform to the maximum allowable weights specified in sections 32-1123.1 through 32-1123.11.

(2) Commodities and material unloaded as required by this section shall be cared for and removed from the highway right of way by the owner or operator of the vehicle at the risk of that owner or operator. The removal shall be within a reasonable time designated by the person who has compelled the unloading.

(3) The department may establish, maintain, and operate, either intermittently or on a continuous schedule, weigh stations and require vehicles, except passenger cars and pickup trucks under eight thousand (8,000) pounds G.V.W., to enter for the purpose of weighing and inspection for compliance with all laws pertaining to their operation and safety requirements.

(4) An employee of the department engaged in the enforcement of this section shall wear and prominently display an identification badge or device which shows the employee's name and title. The department may authorize uniform dress for those employees.

**History:** En. Sec. 5, Ch. 171, L. 1931; amd. Sec. 4, Ch. 184, L. 1939; amd. Sec. 4, Ch. 243, L. 1961; amd. Sec. 1, Ch. 321, L. 1971; amd. Sec. 26, Ch. 316, L. 1974.

#### Amendments

The 1971 amendment deleted "having reason to believe that the weight of a vehicle and load is unlawful" after "highway commission" near the beginning of the section; substituted "any vehicle as

provided in section 32-1123, R. C. M. 1947" for "the same" near the middle of the first paragraph; and inserted the present third paragraph.

The 1974 amendment substituted "department" for "state highway commission" throughout the section; substituted references to sections 32-1123.1 through 32-1123.11 for section 32-1123 in subsection (1); and made minor changes in phraseology, punctuation and style.

### 32-1127. (1751.6) Repealed.

#### Repeal

Section 32-1127 (Sec. 6, Ch. 171, L. 1931; Sec. 2, Ch. 147, L. 1933; Sec. 5, Ch. 184, L. 1939; Sec. 1, Ch. 254, L. 1955; Sec. 5, Ch. 243, L. 1961; Sec. 1, Ch. 225,

L. 1965; Sec. 1, Ch. 83, L. 1969; Sec. 1, Ch. 334, L. 1971), relating to permits for excess size and weight, was repealed by Sec. 209, Ch. 316, Laws of 1974.

**32-1127.1. Permits for excess size and weight.** (1) The department of highways, and local authorities in their respective jurisdictions, may, in their discretion, upon application in writing and with good cause shown, issue a special permit in writing, authorizing the applicant to operate or move a vehicle, combination of vehicles, load, object, or other thing of a size or weight exceeding the maximum specified in sections 32-1123.1 through 32-1123.11 upon a highway under the jurisdiction of and for the maintenance of which the body granting the permit is responsible; however, only the department has the discretion to issue permits for movement of a vehicle or combination of vehicles carrying built-up or reducible loads in excess of nine (9) feet in width or ex-



ceeding the length, height, or weight specified in sections 32-1123.1 through 32-1123.11. This permit shall be issued in the public interest; a carrier receiving this permit must have public liability and property damage insurance for the protection of the traveling public as a whole. A permit may not be issued for a period of time greater than the license period provided in Title 53 or Title 32, including grace periods allowed by those titles. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit. The department may issue oversize permits to dealers in implements of husbandry and self-propelled machinery which may be transferred from unit to unit by the dealer for the fees set forth in section 32-1127.3. These oversize permits expire on December 31 of each year with no grace period. For the purposes of this section, a dealer in implements of husbandry or self-propelled machinery must be a resident of the state. A post-office box number is not a permanent address under this section.

(2) The applicant for a special permit shall specifically describe the powered vehicle or towing vehicle and generally describe the type of vehicle, combination of vehicles, load, object, or other thing to be operated or moved and the particular state highways over which the vehicle, combination of vehicles, load, object, or other thing is to be moved and whether the permit is required for a single trip or for continuous operation.

History: En. 32-1127.1 by Sec. 27, Ch. 316, L. 1974.

**32-1127.2. Special permits—discretion of issuer—conditions.** The department or local authority may issue or withhold a special permit at its discretion, or, if the permit is issued, limit the number of trips, or establish seasonal or other time limitations within which the vehicle, combination of vehicles, load, object, or other thing described may be operated on the public highways indicated, or otherwise limit or prescribe conditions of operation of the vehicle, combination of vehicles, load, object, or other thing when necessary to assure against damage to the road foundation, surfaces or structures or safety of traffic, and may require an undertaking or other security considered necessary to compensate for injury to a roadway or road structure. During harvest no permit may be denied to oversize harvest or harvest-related agricultural machinery solely on the grounds that the travel takes place on a Saturday or Sunday.

History: En. 32-1127.2 by Sec. 28, Ch. 316, L. 1974.

**32-1127.3. Special permits—fees.** The following fees, in addition to the regular license and gross vehicle weight fees, shall be paid for all movements under special permits on the public highways under the jurisdiction of the department:

Six dollars (\$6) for each permit issued in excess of the size and weight specified in sections 32-1123.1 through 32-1123.11. Term or blanket permits may not be issued for overwidth vehicles, combination of vehicles, load or other thing in excess of fifteen (15) feet, overlength vehicles,

combination of vehicles, load, object or other thing in excess of eighty-five (85) feet, and overheight vehicles, combination of vehicles, load, or other thing in excess of thirteen and one-half ( $13\frac{1}{2}$ ) feet or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits.

History: En. 32-1127.3 by Sec. 29, Ch. 316, L. 1974.

**32-1127.4. Self-propelled vehicles.** A self-propelled vehicle used only for the purpose of moving haystacks on a commercial basis is subject to sections 32-1127.1 through 32-1127.9 except as follows:

(1) The vehicle, loaded or unloaded, may not exceed fifty-five (55) feet in length nor twenty (20) feet in width.

(2) A single load may not be moved on the vehicle a distance greater than seventy-five (75) miles from the point of origin on public roads.

(3) When the vehicle is hauling a load, it shall be accompanied by two (2) pilot cars. Each car shall be equipped with a flashing warning light, a red flag, and a sign with the words "wide load" written on it. One (1) car shall precede the vehicle by not less than one hundred (100) yards nor more than one-quarter ( $\frac{1}{4}$ ) mile, and one (1) shall follow the vehicle at a distance not less than one hundred (100) yards nor more than one-quarter ( $\frac{1}{4}$ ) mile. The following pilot car shall be in radio contact with the vehicle at all times.

(4) The speed of the vehicle shall be reasonable and proper but not in excess of thirty-five (35) miles per hour.

(5) The vehicle shall be operated only between the hours of sunrise and sunset.

(6) The vehicle may not be operated on an interstate or controlled-access highway.

(7) A term or blanket permit may be issued for the vehicle.

History: En. 32-1127.4 by Sec. 30, Ch. 316, L. 1974.

**32-1127.5. Other fees—exemption.** A fee of six dollars (\$6) shall be paid for each overweight permit issued, but a permit may not be issued for a period of time greater than the license period provided in Title 53 or Title 32, including grace periods allowed by those titles. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit. In addition to the permit fee, there shall be charged for single trip permits: five dollars (\$5) for distances to and including one hundred (100) miles; fifteen dollars (\$15) for distances from one hundred one (101) to one hundred ninety-nine (199) miles; and twenty-five dollars (\$25) for distances over two hundred (200) miles traveled, for the excess load over the gross allowable load or the sum of the excess axle loads, whichever is greater.

History: En. 32-1127.5 by Sec. 31, Ch. 316, L. 1974.

**32-1127.6. Permits issued to governmental entities.** Permits issued to the United States government, states, counties, cities and their political subdivisions, shall be issued without fee for a term beginning with the date of issuance and expiring December 31.

History: En. 32-1127.6 by Sec. 32, Ch. 316, L. 1974.

**32-1127.7. Special permits—misrepresentations and violations.** A person who knowingly and willfully misrepresents the size or weight of a vehicle, combination of vehicles, load, object, or other thing in obtaining a special permit, or who does not follow the requirements and conditions of the special permit, or who operates a vehicle, combination of vehicles, load, object or other thing, the gross weight of which is in excess of the maximum for which that vehicle, combination of vehicles, load, object, or other thing may be eligible for license, without first obtaining a special permit, is guilty of a misdemeanor.

History: En. 32-1127.7 by Sec. 33, Ch. 316, L. 1974.

**32-1127.8. Display of permit.** A special permit issued under section 32-1127.1 shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any peace officer, officer of the highway patrol, or employee of the department.

History: En. 32-1127.8 by Sec. 34, Ch. 316, L. 1974.

**32-1127.9. Confiscation—action by commission.** A peace officer, officer of the highway patrol, or employee of the department who finds a person operating a vehicle, combination of vehicles, load, object, or other thing in violation of the conditions of a special permit may confiscate the permit and forward it to the highway commission. The commission may return it to the permittee or revoke, cancel, or suspend it without refund. The commission shall keep a record of all action taken upon confiscated permits, and if a permit is returned to the permittee, the action taken by the commission shall be endorsed on it. A permittee whose permit is suspended or revoked may, upon request, receive a hearing before the commission or person designated by the commission. The commission, after the hearing, may reinstate the permit or revise its previous action.

History: En. 32-1127.9 by Sec. 35, Ch. 316, L. 1974.

**32-1127.10. Deposit of fees.** All fees collected under sections 32-1123.1 through 32-1127.9 shall be forwarded to the state treasurer for deposit in the state highway account in the earmarked revenue fund.

History: En. 32-1127.10 by Sec. 36, Ch. 316, L. 1974.

**32-1128. (1751.7) When state or local road authorities may restrict right to use highways.** The department by order, or a local road au-



thority by ordinance or resolution, may prohibit the operation of or impose restrictions on the weight of a vehicle traveling on a public highway under its respective jurisdiction and for which it is responsible for maintenance, whenever the highway will be seriously damaged or destroyed by deterioration, rain, snow or other climatic conditions, unless the use of vehicles on the highway is prohibited or the permissible vehicle weights are reduced. The department, or the authority who enacts the ordinance or resolution shall erect signs designating the department's order or the authority's ordinance or resolution at each end of that portion of the highway affected, and the order or ordinance or resolution is not effective until the signs are erected. The department, or the authority by ordinance or resolution, may prohibit the operation of trucks or other commercial vehicles, or impose limitations on their weight on designated highways. These prohibitions and limitations shall be designated by appropriate signs placed on the highways.

History: En. Sec. 7, Ch. 171, L. 1931; amd. Sec. 6, Ch. 184, L. 1939; amd. Sec. 37, Ch. 316, L. 1974. references to "department" for references to "state road authority" throughout the section; and made minor changes in phraseology and punctuation.

**Amendments**

The 1974 amendment substituted ref-

**32-1129. (1751.8) Repealed.**

**Repeal**

Section 32-1129 (Sec. 8, Ch. 171, L. 1931), relating to restrictions on tire equipment, was repealed by Sec. 209, Ch. 316, Laws of 1974.

**32-1130. (1751.9) Penalties for misdemeanor.** (1) It is a misdemeanor for a person, firm or corporation to violate any of the provisions of section 32-1128.

(2) A person, firm or corporation first convicted of a misdemeanor for a violation of any of the provisions of section 32-1128 shall be punished by a fine of not less than ten dollars (\$10) nor more than fifty dollars (\$50), or by imprisonment in the county or municipal jail for not less than five (5) days nor more than twenty-five (25) days; for a second conviction within one (1) year the person, firm or corporation shall be punished by a fine of not less than fifty dollars (\$50), nor more than two hundred dollars (\$200) or by imprisonment in the county or municipal jail for not less than twenty-five (25) days nor more than one hundred (100) days, or by both this fine and imprisonment; upon a third or subsequent conviction within one (1) year after the first conviction the person, firm or corporation shall be punished by a fine of not less than two hundred dollars (\$200), nor more than five hundred dollars (\$500), or by imprisonment in the county or municipal jail for not less than one hundred (100) days nor more than six (6) months, or by both this fine and imprisonment.

History: En. Sec. 9, Ch. 171, L. 1931; amd. Sec. 7, Ch. 184, L. 1939; amd. Sec. 38, Ch. 316, L. 1974. visions of section 32-1128" for "provisions of this act" in subsections (1) and (2); and made minor changes in phraseology, punctuation and style.

**Amendments**

The 1974 amendment substituted "pro-

**32-1131. (1752) Speed and traffic regulations—disposition of fines.** Any and all fines collected for the violation of any of the provisions of this act shall belong to the general road fund of the county, and shall, immediately after their collection, be paid over by the court or magistrate collecting the same to the county treasurer for the use and benefit of that fund, except for that portion of the fines, as provided for in section 4 [75-5304] of this act, which the county treasurer shall transmit to the state treasurer of Montana and by him credited to the automobile driver education account in the earmarked revenue fund.

**History:** En. Sec. 1, Ch. 10, Ch. 72, L. 1913; re-en. Sec. 1, Ch. 10, Ch. 141, L. 1915; re-en. Sec. 1752, R. C. M. 1921; amd. Sec. 12, Ch. 226, L. 1965; amd. Sec. 11, Ch. 214, L. 1969.

#### Compiler's Notes

Section 75-5304 was repealed by Sec. 12, Ch. 214, Laws 1969. For present provisions, see sec. 75-7901 et seq.

#### Amendments

The 1965 amendment added the exception at the end of the section commencing with "except the penalty."

The 1969 amendment substituted "for that portion of the fines" for "the penalty assessments levied and paid."

#### Separability Clause

Section 13 of Ch. 226, Laws 1965 read "It is the intent of the legislative as-

sembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

#### Repealing Clause

Section 12 of Ch. 214, Laws 1969 read "Sections 75-5301 through 75-5309, R. C. M. 1947, are repealed."

#### Effective Dates

Section 14 of Ch. 226, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.

Section 13 of Ch. 214, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 4, 1969.

### 32-1143 to 32-1145. Repealed.

#### Repeal

Sections 32-1143 to 32-1145 (Secs. 1 to 3, Ch. 7, L. 1941), relating to use of white canes by the blind, were repealed by Sec.

7, Ch. 181, Laws 1971. For similar provisions in current law, see secs. 71-1303 to 71-1308.

## CHAPTER 12—UNIFORM ACCIDENT REPORTING ACT

Section 32-1208. Written reports of accidents, additional information, form of report.  
32-1213. Accident reports confidential.

### 32-1201. Definitions.

#### Cross-References

Highway patrol board abolished and functions transferred, sec. 82A-1205 (2).

Highway patrol functions transferred, sec. 82A-1206.

Registrar's position abolished and functions transferred, sec. 82A-1205 (1).

### 32-1202. Accidents involving death or personal injuries.

#### References

Parini v. Lanch, 148 M 188, 418 P 2d 861, 864.

**32-1208. Written reports of accidents, additional information, form of report.** (a) The operator of any motor vehicle which is in any manner involved in an accident within this state, in which any person is killed or

injured or in which damage to the property of any one person in excess of two hundred and fifty dollars (\$250) is sustained, shall within ten (10) days after such accident report the matter in writing to the supervisor.

(b) and (c) \* \* \* [Same as parent volume.]

(d) Form of report. The form of accident report required under section 32-1208, shall contain information sufficient to enable the department to determine whether the requirements for the deposit of security for safety responsibility are inapplicable by reason of the existence of insurance or other exemptions specified in this act.

**History:** En. Sec. 9, Ch. 210, L. 1939; amd. Sec. 5, Ch. 256, L. 1959; amd. Sec. 1, Ch. 52, L. 1971.

#### Amendments

The 1971 amendment revised and reworded subsection (a) to raise the mini-

mum damage requiring a report from \$100 to \$250, and to apply the amount to damage sustained by any one person rather than to total damage; and substituted "exemptions" for "exceptions" at the end of subsection (d).

**32-1213. Accident reports confidential.** (a). \* \* \* [Same as parent volume.]

(b) All accident reports and supplemental information filed as required by this act shall be confidential and not open to general public inspection, nor shall copying of lists of such reports be permitted, except, however, that the report and supplemental information filed by law enforcement personnel, as required by this act may be examined by any person named in such report or reports or by any driver, passenger or pedestrian involved in the accident or by his representative designated in writing, or if such person shall be deceased, by his executor or administrator or by the attorney representing such executor or administrator.

(c). \* \* \* [Same as parent volume.]

**History:** En. Sec. 14, Ch. 210, L. 1939; amd. Sec. 9, Ch. 256, L. 1959; amd. Sec. 1, Ch. 142, L. 1973.

#### Amendments

The 1973 amendment substituted "filed as required by this act" near the beginning of subsection (b) for "filed in connection with the administration of the laws of this state relating to the deposit of security or proof of financial responsibility"; substituted "the report and supplemental information filed by law enforcement personnel, as required by this act" in subsection (b) for "such reports and supplemental information"; inserted "or by any driver, passenger or pedestrian involved in the accident" in the latter part of subsection (b); added "or if such per-

son shall be deceased, by his executor or administrator or by the attorney representing such executor or administrator" at the end of subsection (b); and made a minor change in phraseology.

#### Inadmissibility in Evidence

In negligence action by driver of automobile against city and driver of city road grader with whom he collided, accident report filed by city driver with Butte city police department was privileged, confidential and inadmissible and its admission into evidence over objection of city driver was prejudicial error even though case was heard by court without jury. *Morrison v. City of Butte*, 150 M 106, 431 P 2d 79.

**32-1215. Any incorporated city may require accident reports.**

#### Inadmissibility in Evidence

In negligence action by driver of automobile against city and driver of city road grader with whom he collided, accident report filed by city driver with Butte city police department was privileged, confi-

dential and inadmissible and its admission into evidence over objection of city driver was prejudicial error even though case was heard by court without jury. *Morrison v. City of Butte*, 150 M 106, 431 P 2d 79.



## CHAPTER 13—GOOD ROADS DAY

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

## 32-1301. (1764) Repealed.

**Repeal**

This section (Sec. 1, Ch. 20, L. 1915), relating to good roads day, was repealed

by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4401.

## CHAPTER 14—PRIVATE ROADS, HOW ESTABLISHED

## 32-1401. (1765) Repealed.

**Repeal**

Section 32-1401 (Sec. 2780, Pol. C. 1895), relating to establishment of pri-

vate roads, was repealed by Sec. 209, Ch. 316, Laws of 1974.

## CHAPTER 15—FERRIES

Section 32-1502. Notice of application.

**32-1502. (1767) Notice of application.** The board of commissioners may not grant authority to erect a toll ferry until the notice of the intended application has been given as required in section 32-1503.

**History:** En. Sec. 2821, Pol. C. 1895; re-en. Sec. 1458, Rev. C. 1907; re-en. Sec. 1767, R. C. M. 1921; amd. Sec. 39, Ch. 136, L. 1974. Cal. Pol. C. Sec. 2844.

**Amendments**

The 1974 amendment substituted "as required in section 32-1503" for "as required in this article"; and made minor changes in phraseology.

CHAPTER 16—DEPARTMENT OF HIGHWAYS—  
DIRECTOR—POWERS AND DUTIES

Section 32-1627. State payment of construction and maintenance costs within municipalities—municipal share of curb and gutter costs.

**32-1628. Bypassing of municipalities—consent of municipal governing body.**

32-1631.1. Definition of public highways.

32-1632. Appointment of employees as peace officers.

32-1633. Training of department peace officers—rules.

32-1634. Training required before arrests authorized.

32-1635. Official attire required for making arrests and carrying firearms.

32-1636. Power to inspect vehicle registration, receipts and other documents.

32-1637. Identification badge and uniform.

32-1638. [Transferred.]

32-1639. Offenses for which arrest authorized.

32-1640. Co-operation with other agencies.

32-1641. Duty of authorized employee upon making an arrest—power to fix and accept bail—fees of justices of peace.

## 32-1601 to 32-1618. (1783 to 1798) Repealed.

**Repeal**

These sections (Secs. 1 to 16, Ch. 10, Ex. L. 1921; Sec. 1, Ch. 129, L. 1925; Secs. 1, 2, Ch. 92, L. 1939; Sec. 1, Ch. 111, L. 1941; Secs. 1 to 6, Ch. 86, L. 1945; Sec. 1, Ch. 155, L. 1945; Sec. 1, Ch. 117, L. 1953; Sec. 1, Ch. 118, L. 1953; Sec. 1, Ch. 91, L. 1955; Sec. 1, Ch. 43, L. 1957; Sec. 1, Ch. 98, L. 1959; Sec. 1, Ch. 210, L. 1959; Sec. 1, Ch. 124, L. 1961; Sec. 1, Ch. 180, L. 1961; Sec. 1, Ch. 182, L. 1961;

Sec. 1, Ch. 222, L. 1961; Sec. 1, Ch. 91, L. 1963; Secs. 1, 2, Ch. 143, L. 1963; Sec. 1, Ch. 125, L. 1965; Secs. 17, 18, Ch. 177, L. 1965), relating to the powers and the duties of the state highway commission and the highway engineer, were repealed by Sec. 158, Ch. 263, Laws 1955; Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2401 to 32-2413, 32-2418, 32-2501 to 32-2503, 32-3902 to 32-3916, 32-4016, 32-4101 to 32-4103.

**32-1619. (1799) Repealed.****Repeal**

Section 32-1619 (Sec. 17, Ch. 10, Ex. L., 1921; Sec. 212, Ch. 147, L. 1963), relating

to disposition of state highway moneys, was repealed by Sec. 209, Ch. 316, Laws of 1974.

**32-1620. (1800) Repealed.****Repeal**

This section (Sec. 18, Ch. 10, Ex. L. 1921; Sec. 7, Ch. 86, L. 1945; Sec. 18, Ch. 97, L. 1961), relating to claims against

the state highway commission, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-2417.

**32-1622 to 32-1626. Repealed.****Repeal**

These sections (Sec. 1, Ch. 15, L. 1955; Secs. 1, 2, Ch. 30, L. 1955; Sec. 1, Ch. 254, L. 1957; Sec. 1, Ch. 204, L. 1961; Sec. 1, Ch. 219, L. 1963), relating to state

and federal aid highways were repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2302, 32-2411 and 32-2414 to 32-2416.

**32-1627. State payment of construction and maintenance costs within municipalities—municipal share of curb and gutter costs.** (1) Except as provided in subsection (2) of this section, the department of highways shall pay the entire costs of construction and maintenance of streets and highways which:

(a) Are state highway routes; and

(b) Are within municipalities incorporated prior to January 1, 1965.

(2) An incorporated municipality shall pay one-half ( $\frac{1}{2}$ ) of the state's share of the cost of curbs and gutters along those streets and highways.

**History:** En. Sec. 1, Ch. 210, L. 1965; amd. Sec. 40, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment substituted "department of highways" for "state highway commission"; and made minor changes in phraseology.

**Title of Act**

An act relating to construction and maintenance of certain streets and highways in or near incorporated municipalities.

**32-1628. Bypassing of municipalities—consent of municipal governing body.** (1) The department may not construct highway bypasses or highway relocation projects without prior consent of the governing body of an incorporated municipality when the bypasses or projects:

(a) Are not part of the national system of interstate highways built under the national defense highway act; and

(b) Divert motor vehicles from an existing highway route through a municipality incorporated prior to January 1, 1965.

(2) The department shall notify the governing body of the municipality by certified mail that it proposes to bypass the municipality. A contract may not be let nor work commenced until the governing body notifies the department of its consent, or until the elapse of sixty (60) days after the notice has been sent by the department to the municipality, whichever first occurs. The failure of the municipality to act and notify the department of its action within the sixty (60) day period is implied consent to the bypass.

(3) Actual consent or refusal to bypass shall be in the form of a resolution, duly adopted by a majority of the members of the governing body of the municipality.

(4) The governing body may not withdraw consent once the department has been notified of the consent.

**History:** En. Sec. 2, Ch. 210, L. 1965; amd. Sec. 41, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "highway commission" and "commission" throughout the section; deleted a final subsection which stated that nothing in the act shall modify section 32-1625; and made minor changes in phraseology.

#### Effective Date

Section 3 of Ch. 210, Laws, 1965 pro-

vided the act should be in effect from and after its passage and approval. Approved March 6, 1965.

#### Retrospective Application

Statute would not be enforced in favor of nonconsenting municipality where state highway commission had acquired rights and obligations and begun construction of the bypass before its enactment and enactment did not disclose legislative intent to apply retroactively. *City of Harlem v. State Highway Commission*, 149 M 281, 425 P 2d 718.

### 32-1629, 32-1629.1 to 32-1631. Repealed.

#### Repeal

Sections 32-1629, 32-1629.1 to 32-1631 (Secs. 1 to 3, Ch. 128, L. 1965; Secs. 1, 2,

Ch. 309, L. 1967) relating to littering on highway, were repealed by Sec. 12, Ch. 323, Laws 1971.

**32-1631.1. Definition of public highways.** In sections 32-1632 through 32-1641, the term "public highways" means "highways" as defined in section 32-2114.

**History:** En. Sec. 7, Ch. 242, L. 1971; Sec. 32-1638, R. C. M. 1947; amd. and redes. 32-1631.1 by Sec. 48, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; inserted "In sections 32-1632 through 32-1641"; and made minor changes in phraseology.

**32-1632. Appointment of employees as peace officers.** The director of highways may appoint employees of the department as peace officers to carry out sections 32-1632 through 32-1641. The employees appointed may include only those employees of the department who are employed in the administration of the gross vehicle weight functions of the department. Each employee appointed shall be issued a certificate of appointment and execute an oath of office which shall be entered into the records of the department.

**History:** En. Sec. 1, Ch. 242, L. 1971; amd. Sec. 42, Ch. 316, L. 1974.

#### Title of Act

An act authorizing the highway commission to grant certain employees of the state highway commission the power of arrest in specified instances, providing for rules and regulations, establishing qualifications to accept bail, issue summons, file complaints, and providing for cooperation with other peace officers.

#### Amendments

The 1974 amendment substituted the

first sentence for "The state highway commission is hereby empowered to appoint employees as peace officers to carry out the provisions expressly set forth in this act"; substituted "department" for "commission" in the second sentence; and made minor changes in phraseology.

#### Cross-References

Arrest by a peace officer, sec. 95-608.

Definition of peace officer, sec. 95-210.

Highway commission functions transferred, sec. 82A-703.



**32-1633. Training of department peace officers—rules.** The department shall provide such training as required to qualify those employees to competently perform their duties under sections 32-1632 through 32-1641, and shall adopt such rules as are required and necessary for qualification of those employees as peace officers.

**History:** En. Sec. 2, Ch. 242, L. 1971; amd. Sec. 43, Ch. 316, L. 1974.

partment" for "commission"; substituted "under sections 32-1632 through 32-1641" for "under this act"; and made minor changes in phraseology.

#### **Amendments**

The 1974 amendment substituted "de-

**32-1634. Training required before arrests authorized.** An employee may not make arrests until he has successfully completed such training as required by the department.

**History:** En. Sec. 3, Ch. 242, L. 1971; amd. Sec. 44, Ch. 316, L. 1974.

#### **Amendments**

The 1974 amendment substituted "department" for "commission"; and made minor changes in phraseology.

**32-1635. Official attire required for making arrests and carrying firearms.** Qualified employees may make arrests throughout the state only when dressed in official uniform and displaying the official badge authorized by the department. Authorized employees may not carry firearms unless officially attired.

**History:** En. Sec. 4, Ch. 242, L. 1971; amd. Sec. 45, Ch. 316, L. 1974.

#### **Amendments**

The 1974 amendment substituted "department" for "highway commission"; and made minor changes in phraseology.

**32-1636. Power to inspect vehicle registration, receipts and other documents.** Employees of the department appointed under section 32-1632 may when officially dressed make reasonable inspection of vehicle registration receipts, department receipts and registrations, special permits, and other documents required to be carried in or for a vehicle traveling on the public highways of Montana.

**History:** En. Sec. 5, Ch. 242, L. 1971; amd. Sec. 46, Ch. 316, L. 1974.

partment" for "state highway commission"; substituted "under section 32-1632" for "under this act"; and made minor changes in phraseology and punctuation.

#### **Amendments**

The 1974 amendment substituted "de-

**32-1637. Identification badge and uniform.** Employees of the department engaged in the enforcement of sections 32-1632 through 32-1641 shall wear and prominently display an identification badge or device with the employee's name and title shown on the identification badge or device. The department may authorize uniform dress for department employees engaged in such enforcement.

**History:** En. Sec. 6, Ch. 242, L. 1971; amd. Sec. 47, Ch. 316, L. 1974.

partment" for "state highway commission"; substituted "of sections 32-1632 through 32-1641" for "of this act"; and made minor changes in phraseology.

#### **Amendments**

The 1974 amendment substituted "de-

**32-1638. [Transferred.]****Compiler's Notes**

Section 48, Ch. 316, Laws of 1974 re-numbered this section as sec. 32-1631.1.

**32-1639. Offenses for which arrest authorized.** Employees appointed under section 32-1632 may make arrests for violations of the following statutory provisions only:

- (1) Sections 32-1123.1 through 32-1130;
- (2) Sections 32-3201 through 32-3203;
- (3) Title 32, chapter 33;
- (4) Title 32, chapter 34;
- (5) Section 53-119.1;
- (6) Section 84-1833;
- (7) Sections 84-1841 through 84-1844;
- (8) Sections 84-6601 through 84-6605.

These employees may not arrest for violations other than specified in this section.

**History:** En. Sec. 8, Ch. 242, L. 1971; amd. Sec. 49, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment substituted "Employees appointed under section 32-1632" in the first sentence for "Authorized employees of the state highway commission"; substituted "Section 32-1123.1" for "Sec-

tion 32-1122" in subdivision (1); substituted subdivision (3) for references to sections 32-3301 through 32-3316; substituted subdivision (4) for references to sections 32-3401 through 32-3406; deleted a former subdivision (5) referring to sections 53-118.1 through 53-118.4; and made minor changes in phraseology and punctuation.

**32-1640. Co-operation with other agencies.** Such employees of the department shall co-operate with other law enforcement agencies.

**History:** En. Sec. 9, Ch. 242, L. 1971; amd. Sec. 50, Ch. 316, L. 1974.

partment" for "state highway commission"; and made minor changes in phraseology.

**Amendments**

The 1974 amendment substituted "de-

**32-1641. Duty of authorized employee upon making an arrest—power to fix and accept bail—fees of justices of peace.** (1) Such employees, upon making an arrest, shall deliver to the offender a form of notice to appear describing the nature of the offense with instructions on the notice to appear for the offender to report to the nearest justice of the peace. The employee may accept a deposit for appearance justifiable for the offense charged. The person arrested may be detained for a reasonable time for the purpose of issuing the notice. If the employee accepts bail, he shall give a signed receipt to the offender setting forth the amount received. The employee shall then deliver the bail money to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the employee for the amount of bail money delivered. After the filing of the complaint and appearance of the defendant, the justice of the peace shall assume jurisdiction and may set and accept further appearance bail bond.

(2) For the purpose of sections 32-1632 through 32-1641 only, the fees of justices of the peace in all offenses in which the statutory fine is

five dollars (\$5) or less, shall be one dollar (\$1), but if the statutory fine is in excess of five dollars (\$5), the justices of the peace are permitted the fee prescribed by law; no additional fees shall be paid justices of the peace where salaries are fixed by law.

**History:** En. Sec. 10, Ch. 242, L. 1971; amd. Sec. 51, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "no-

tice to appear" for "summons" in subsection (1); substituted "sections 32-1632 through 32-1641" for "this act" in subsection (2); and made minor changes in phraseology, punctuation and style.

## CHAPTER 17—NATIONAL DEFENSE HIGHWAY PROGRAM

Section 32-1702. Powers and duties.

32-1703. Highway safety and driver training program.

### 32-1701. Repealed.

#### Repeal

Section 32-1701 (Sec. 1, Ch. 82, L. 1941; Sec. 2, Ch. 94, L. 1953), relating to abolishment of the state highway traffic ad-

visory committee and transfer of its functions to the director of the civil defense agency, was repealed by Sec. 73, Ch. 94, Laws of 1974.

**32-1702. Powers and duties.** The department of military affairs shall:

(1) Co-operate with the agencies of this and other states and of the federal government which are connected with national defense, in the formulation and execution of plans for the rapid and safe movement over the highways of troops, vehicles of a military nature, and materials affecting the national defense.

(2) Co-ordinate the activities of the department of highways and the department of justice in a manner which will best serve to carry out any such plan for the rapid and safe movement of troops, vehicles, and materials as referred to in paragraph (1) of this section.

(3) Solicit the co-operation of officials of the various political subdivisions of the state in the proper execution of these plans.

(4) Have the authority to take an inventory, by counties, of the trucks and buses in the state, publicly and privately owned, which would be available in case of emergency affecting the national defense.

**History:** En. Sec. 2, Ch. 82, L. 1941; amd. Sec. 3, Ch. 94, L. 1953; amd. Sec. 1, Ch. 94, L. 1974.

#### Amendments

The 1974 amendment substituted "department of military affairs" for "director" in the first sentence; substituted "depart-

ment of highways and the department of justice" in subdivision (2) for "Montana highway commission, the Montana highway patrol, and the registrar of motor vehicles"; inserted "Have the authority" at the beginning of subdivision (4); and made minor changes in phraseology, punctuation and style.

**32-1703. Highway safety and driver training program.** The department of military affairs may, in conjunction with any interested public or private agencies, conduct a highway safety and driver training program as an aid to the national defense.

**History:** En. Sec. 3, Ch. 82, L. 1941; amd. Sec. 4, Ch. 94, L. 1953; amd. Sec. 2, Ch. 94, L. 1974.

#### Amendments

The 1974 amendment substituted "department of military affairs" for "director."



## CHAPTER 18—STOCK LANE LAW

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

**32-1801 to 32-1804. Repealed.****Repeal**

These sections (Secs. 1 to 4, Ch. 63, L. 1939), the Stock Lane Law, were repealed

by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4015.

## CHAPTER 19—MONTANA TOLL BRIDGE AUTHORITY

(Repealed—Section 12-109, Chapter 197, Laws of 1965)

**32-1901 to 32-1915. Repealed.****Repeal**

These sections (Secs. 1 to 15, Ch. 31, L. 1953; Sec. 11-117, Ch. 264, L. 1963), relating to toll bridges, were repealed by

Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2701 to 32-2716, 32-3501 to 32-3509, and 32-3919.

## CHAPTER 20—CONTROLLED ACCESS HIGHWAYS

(Repealed—Section 12-109, Chapter 197, Laws of 1965)

**32-2001 to 32-2010. Repealed.****Repeal**

These sections (Secs. 1 to 10, Ch. 104, L. 1955; Secs. 1 to 3, Ch. 121, L. 1957; Sec. 1, Ch. 134, L. 1959; Secs. 1 to 9, Ch. 156, L. 1963; Sec. 2, Ch. 90, L. 1965), relating to controlled access highways, were

repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-3920, 32-4018, and 32-4301 to 32-4311. Sec. 1, Ch. 90, L. 1965 which was inadvertently classified as section 32-2008.1 has been transferred to section 32-4308.1.

## CHAPTER 21—UNIFORM ACT REGULATING TRAFFIC ON HIGHWAYS

Section 32-2124.3.	Forest development road, special service road defined.
32-2124.4.	State laws applicable on forest development roads—enforcement.
32-2124.5.	Special service roads not subject to state law enforcement.
32-2133.	Department of highways to adopt sign manual.
32-2134.	Department of highways to sign all state highways.
32-2134.1.	Injury to or removal of sign or marker as misdemeanor—penalty.
32-2134.2.	Reward for information on injury to or removal of sign or marker.
32-2134.3.	Posting of act along highways.
32-2137.	Traffic-control signal legend.
32-2142.	Persons under the influence of intoxicating liquor or of drugs.
32-2142.1.	Chemical blood, breath, or urine tests.
32-2142.2.	Right of appeal to court.
32-2142.3.	Administration of tests.
32-2143.1.	Permission of authorities to hold speed contest.
32-2143.2.	Penalty for unauthorized drag racing.
32-2144.	Speed restrictions—basic rule.
32-2144.1.	Declaration of speed limits—exception to the basic rule.
32-2144.2.	Not applicable to certain streets and highways.
32-2144.3.	Termination of declaration.
32-2144.4.	Subject to Administrative Procedure Act.
32-2144.5.	Lower speed limits.
32-2144.6.	Enforcement.
32-2144.7.	Existing statutes not affected.
32-2145.	Establishment of special speed zones.
32-2146.	When local authorities may and shall alter limits.
32-2147.	Minimum speed regulations.
32-2148.	Special speed limitations on trucks, truck-tractors, motor-driven cycles and vehicles towing house trailers.
32-2149.	Special speed limitations.
32-2150.3.	Erection of signs.

- 32-2157. No-passing zones.
- 32-2158. One-way roadways and rotary traffic islands.
- 32-2163. Restrictions on use of controlled access roadway.
- 32-2170. Vehicle approaching or entering intersection.
- 32-2173. Vehicle entering highway from private road, driveway or public approach ramp.
- 32-2174. Vehicles approaching "Yield" sign.
- 32-2177. Pedestrians' right of way in crosswalk.
- 32-2192. All vehicles must stop at certain railroad grade crossings.
- 32-2195. Vehicles must stop at stop signs.
- 32-2197. Overtaking and passing school bus.
- 32-2198. Special lighting equipment on school buses.
- 32-21-102. Additional parking regulations.
- 32-21-105. Riding on motorcycles.
- 32-21-105.1. Headgear required for motorcycle riders—noise suppression devices.
- 32-21-113. Shooting from or across highway.
- 32-21-122. Additional equipment required on certain vehicles.
- 32-21-130. Lamps on other vehicles and equipment—emblem to be used on certain slow-moving vehicles—slow-moving vehicles to permit overtaking vehicles to pass.
- 32-21-132. Audible and visual signals on vehicles.
- 32-21-143.1. Brake equipment required.
- 32-21-143.2. Performance ability of brakes.
- 32-21-143.3. Maintenance of brakes.
- 32-21-143.4. Hydraulic brake fluid.
- 32-21-149. Restrictions as to tire equipment.
- 32-21-149.1. Fenders, splash aprons or flaps required on certain vehicles—dimension and location—violation a misdemeanor—penalty
- 32-21-150.1. Seat belts required in new vehicles.
- 32-21-150.2. Specifications for seat belts.
- 32-21-150.3. Penalty for seat belt violations.
- 32-21-155.1. Semiannual inspection of school buses.
- 32-21-163. Unlawful operation by child under eighteen—concurrent original jurisdiction of district court and justice court—penalties—impounding of vehicle, when.
- 32-21-164. Summons—issuing to child under eighteen.
- 32-21-166. Vehicle equipment safety compact—text.
- 32-21-167. Legislative findings on equipment safety.
- 32-21-168. Equipment requirements continued in force.
- 32-21-169. State commissioner on vehicle equipment safety commission.
- 32-21-170. Retirement of equipment safety commission employees.
- 32-21-171. Governmental agencies to co-operate with equipment safety commission.
- 32-21-172. Documents filed and notices given by equipment safety commission.
- 32-21-173. Equipment safety commission budgets.
- 32-21-174. Equipment safety commission accounts.
- 32-21-175. Governor as executive head for compact purposes.
- 32-21-176. Grazing livestock on highway unlawful.
- 32-21-177. Exclusions from preceding section.
- 32-21-178. Penalty for violating act.
- 32-21-179. Flagmen escorts—prohibitions against nighttime herding on public highways.
- 32-21-180. Violations.

### 32-2110. Definitions—supervisor—board—commission.

#### Cross-References

Highway commission functions transferred, sec. 82A-703.

### 32-2114. Street or highway—private road or driveway—roadway, etc.

#### References

Faucette v. Christensen, 145 M 28, 400 P 2d 883.

**32-2115. Intersection.****Nature of Roads Forming Intersection**

An intersection is formed when two publicly maintained ways join at any angle. *Rader v. Nicholls*, 140 M 459, 373 P 2d 312, 313.

**References**

*Faucette v. Christensen*, 145 M 28, 400 P 2d 883.

**32-2119. Official traffic-control devices, etc.****Detour Signs and Barricades**

Detour signs and "zebra board" barricades are official traffic-control devices when erected by public authority in conformity with provisions of the Highway

Code; their use to block off an unopened section of highway under construction negatives any implied consent to use of the section. *Gilleard v. Draine*, 159 M 167, 496 P 2d 83.

**32-2124.3. Forest development road, special service road defined.**

For the purpose of this act a "forest development road" is defined as a road located on national forest lands or on a right of way acquired by the United States and used for the protection, administration and utilization of the national forests and other lands administered by the United States forest service; and a "special service road" is defined as a forest development road or segment thereof, the right of way for which is controlled by the United States and which is not a part of the highway system of the state or of a county or other public road authority of this state, designated by the forest service, pursuant to the regulations of the secretary of the United States department of agriculture, as a special service road for the purpose of controlling and regulating its use to accomplish the purposes of the secretary of agriculture's regulations applicable to the administration of the forest development transport system.

**History:** En. Sec. 1, Ch. 139, L. 1971.

**Title of Act**

An act to make Montana traffic laws applicable to forest development roads except as additional or conflicting rules

may be designated by the United States forest service for portions thereof designated as special service roads, and to confer law enforcement jurisdiction upon the Montana highway patrol and sheriffs of this state to enforce the traffic laws.

**32-2124.4. State laws applicable on forest development roads—enforcement.** Forest development roads in the state of Montana, whether or not they meet the definition of a public highway by the laws of this state, are subject to the traffic laws of this state and the Montana highway patrol and county sheriffs of this state shall have jurisdiction thereon to investigate accidents and enforce the Montana traffic laws.

**History:** En. Sec. 2, Ch. 139, L. 1971.

**32-2124.5. Special service roads not subject to state law enforcement.** When forest development roads, or segments thereof, are designated as special service roads by the United States forest service and by such designation are subjected to traffic rules in addition to or in conflict with the Montana traffic laws, neither the additional nor conflicting traffic rules so prescribed by the forest service nor the Montana traffic law with which they conflict shall be within the jurisdiction of law enforcement officers of this state as to such special service road.

**History:** En. Sec. 3, Ch. 139, L. 1971.



**32-2133. Department of highways to adopt sign manual.** The department of highways shall adopt a manual and specifications for a uniform system of traffic-control devices consistent with this act for use upon highways within the state. This uniform system shall correlate with and so far as possible conform to the system then current as approved by the American association of state highway officials; however, the department shall adopt for use on controlled access highways, the interstate sign manual as adopted by the American association of state highway officials, February 10, 1958, and approved by the United States department of commerce, bureau of public roads, February 21, 1958, and all subsequent amendments relating thereto.

**History:** En. Sec. 30, Ch. 263, L. 1955; amd. Sec. 1, Ch. 241, L. 1959; amd. Sec. 52, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "department of highways" for "state highway commission" and "department" for "commission"; and made minor changes in phraseology.

#### Lack of Uniformity

Where plaintiff attempted to pass defendant's truck 250 feet from unmarked intersection, and was struck by defendant's truck as it started to make a left-hand turn, in reconciling this section with section 32-2156, which prohibits driving to the left of the center line 100 feet from intersection, it was not error on the

judge's part to refuse to instruct jury on the latter section. *Graveley v. Springer*, 145 M 486, 402 P 2d 41.

#### Manual as Evidence

In action for wrongful death of driver of state highway truck killed while sanding road in snowstorm, it was error to admit into evidence Manual on Uniform Traffic Control Devices adopted by highway commission where manual required that appropriate signs be erected warning public of road work but did not specifically designate who was to erect them. *Williams v. Maley*, 150 M 261, 434 P 2d 398.

#### References

*Faucette v. Christensen*, 145 M 28, 400 P 2d 883.

**32-2134. Department of highways to sign all state highways.** (a) The department of highways shall place and maintain traffic-control devices, conforming to its manual and specifications, upon all state highways it considers necessary to indicate and to carry out this act or to regulate, warn, or guide traffic.

(b) A local authority may not place or maintain a traffic-control device upon a highway under the jurisdiction of the department except by the latter's permission.

(c) Only the department may erect and maintain these traffic-control devices conforming to its manual and specifications on a controlled access highway or controlled access facility. The erection of a sign, marker, or emblem on a controlled access facility or controlled access highway by any other public authority, or agent, or by a private individual, firm or corporation is unlawful and a misdemeanor and punishable as provided in subsection (e).

(d) The erection or maintenance of a sign, marker, emblem or traffic-control device on a state highway except a controlled access highway or controlled access facility, is subject to the rules, regulations, and specifications the department adopts and publishes in the interest of public safety and convenience.

(e) The erection of a sign, emblem, marker or traffic-control device in violation of this section is a misdemeanor, punishable by a fine of not

less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300).

(f) An unauthorized sign, emblem, marker or traffic-control device or portion thereof encroaching into, over, or upon a right of way of a state highway, or controlled access highway is a public nuisance, and the department may remove it or cause it to be removed without notice and without liability for the removal.

**History:** En. Sec. 31, Ch. 263, L. 1955; amd. Sec. 1, Ch. 224, L. 1959; amd. Sec. 53, Ch. 316, L. 1974.

"commission" throughout the section; and made minor changes in phraseology and punctuation.

#### Amendments

The 1974 amendment substituted "department of highways" for "state highway commission" and "department" for

#### References

Faucette v. Christensen, 145 M 28, 400 P 2d 883.

**32-2134.1. Injury to or removal of sign or marker as misdemeanor—penalty.** Every person who maliciously injures, defaces, damages or removes any sign, signal or marker, either temporarily or permanently erected on the right of way of any secondary, state or interstate highway for warning, instruction or information of the public, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of two hundred fifty dollars (\$250) or by imprisonment in the county jail for a period not exceeding sixty (60) days, or both such fine and imprisonment in the discretion of the court. This act applies to secondary, state or interstate highways which are completed and to secondary, state or interstate highways which are under construction or repair.

**History:** En. Sec. 1, Ch. 184, L. 1965.

#### Title of Act

An act making it unlawful to damage, deface or remove any sign, signal or

marker erected on the right of way of any secondary, state or interstate highway; requiring the state highway commission to post notices hereof; providing for a penalty, reward and a repealing clause.

**32-2134.2. Reward for information on injury to or removal of sign or marker.** Upon conviction under the provisions of this act, any person who furnishes information to law enforcement officers leading to the arrest and conviction of the accused person shall be paid a reward from the state highway account in the earmarked revenue fund in the sum of one hundred dollars (\$100).

**History:** En. Sec. 2, Ch. 184, L. 1965.

**32-2134.3. Posting of act along highways.** The department of highways shall post notices of this act, and the penalties provided for, at locations designated by the department.

**History:** En. Sec. 3, Ch. 184, L. 1965; amd. Sec. 54, Ch. 316, L. 1974.

for "state highway commission"; and made minor changes in phraseology.

#### Amendment

The 1974 amendment substituted "department of highways" and "department"

#### Repealing Clause

Section 4 of Ch. 184, Laws 1965 repealed all acts and parts of acts in conflict therewith.

**32-2136. Obedience to and required traffic-control devices.**

#### References

Faucette v. Christensen, 145 M 28, 400 P 2d 883.

**32-2137. Traffic-control signal legend.** Whenever traffic is controlled by traffic-control signals exhibiting the words "Go," "Caution," or "Stop," or exhibiting different colored lights successively one at a time, or with arrows, the following colors only shall be used and said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) and (b) \* \* \* [Same as parent volume.]

(c) Red Alone or "Stop":

1. Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until green or "Go" is shown alone or until a right turn can safely be made and in making such turn vehicular traffic must yield the right of way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection. If a traffic sign legend indicating that no right turn on red may be made after a stop is posted at said intersection, such movement cannot be made until green or "Go" is shown alone.

2. \* \* \* [Same as parent volume.]

(d) \* \* \* [Same as parent volume.]

(e) Traffic Control Signal at Place Other Than Intersection:

1. In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their very nature can have no application.

2. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

**History:** En. Sec. 34, Ch. 263, L. 1955; amd. Sec. 1, Ch. 211, L. 1963; amd. Sec. 1, Ch. 206, L. 1974.

#### Amendments

The 1963 amendment inserted a former subdivision (e) deleted by the 1974 amendment.

The 1974 amendment added "or until a right turn \* \* \* is shown alone" to the end of subdivision (c)(1); and deleted former subdivision (e) which read "Red

with Traffic Sign Legend—Right Turn on Red After Stop: 1. Vehicular traffic facing such signal and legend shall stop and then may cautiously enter the intersection only to make the turn indicated by the legend but shall yield the right of way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection. 2. No pedestrian facing such signal and legend shall enter the roadway until the green or 'Go' is shown alone."

**32-2142. Persons under the influence of intoxicating liquor or of drugs.** (a) \* \* \* [Same as parent volume.]

(b) In any criminal prosecution for a violation of paragraph (a) of this section relating to driving a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, urine, breath or other bodily substance, shall give rise to the following presumptions:

1. If there was at that time 0.05 per cent or less by weight of alcohol in the defendant's blood it shall be presumed that the defendant was not under the influence of intoxicating liquor:

2. If there was at that time in excess of 0.05 per cent but less than 0.10 per cent by weight of alcohol in the defendant's blood, such fact shall



not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant:

3. If there was at that time 0.10 per cent or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor:

4. Per cent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred (100) cubic centimeters of blood:

5. \* \* \* [Same as parent volume.]

(c) to (e) \* \* \* [Same as parent volume.]

(f) The board shall forthwith revoke the license or permit to drive and operating privilege and any nonresident operating privilege of any person upon receiving a record of such person's conviction or forfeiture of bail not vacated under this section.

History: En. Sec. 39, Ch. 263, L. 1955; amd. Sec. 1, Ch. 194, L. 1957; amd. Sec. 3, Ch. 201, L. 1957; amd. Sec. 1, Ch. 109, L. 1951; amd. Sec. 1, Ch. 132, L. 1971.

incident because proof of involuntary manslaughter requires proof of an additional fact. State v. McDonald, 158 M 307, 491 P 2d 711.

#### Amendments

The 1971 amendment reduced the percentage of alcohol required for presumption of intoxication, as specified in subdivisions 2 and 3 of subsection (b), from .15 per cent to .10 per cent; substituted 'grams of alcohol per one hundred (100) cubic centimeters of blood' at the end of subdivision 4 for "milligrams of alcohol per one hundred (100) milligrams of blood"; and made minor changes in punctuation.

#### Effective Date

Section 2 of Ch. 132, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

#### Double Jeopardy

Conviction under this section did not bar subsequent prosecution for involuntary manslaughter arising out of the same

#### Improperly Conducted Test

Although it was improper to admit results of blood test showing that deceased's blood contained 0.15% alcohol by weight where testimony disclosed that tube used to collect blood sample had previously contained formalin and formaldehyde which could have resulted in higher than actual alcohol content result, error was not reversible in view of other testimony concerning deceased's state of intoxication. Benner v. B. F. Goodrich Co., 150 M 97, 430 P 2d 648.

#### Jurisdiction of Justice of Peace

Since the driving of a vehicle on a highway while under the influence of intoxicating liquor is a misdemeanor under this section, it falls within the jurisdiction of a justice of the peace under section 93-410. Wilson v. Brodie, 148 M 235, 419 P 2d 306, 308.

32-2142.1. Chemical blood, breath, or urine tests. (a) Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent, subject to the provisions of section 32-2142, R. C. M., 1947, to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if arrested by a peace officer for driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor. The test shall be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor. The arresting officer may designate which one of the aforesaid tests shall be administered.

(b) Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by paragraph (a) of this section.

(c) If a person under arrest refuses upon the request of a peace officer to submit to a chemical test designated by the arresting officer as provided in paragraph (a) of this section, none shall be given, but the Montana highway patrol board, upon the receipt of a sworn report of the peace officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor and that the person had refused to submit to the test upon the request of the peace officer, shall suspend the license or driving privilege of such person on the highways of this state for a period of sixty (60) days. Like refusal by a nonresident shall be subject to suspension by the board in like manner. All such suspensions are subject to review as hereinafter provided.

**History:** En. Sec. 1, Ch. 131, L. 1971.

**Title of Act**

An act to provide for an intoxication test and consent thereto, for persons ar-

rested for driving while under the influence of intoxicating liquor, providing for suspension upon refusal of operator to submit to test, providing for an appeal of license suspension.

**32-2142.2. Right of appeal to court.** (a) Any person whose license or privilege to drive has been suspended, as hereinbefore authorized, the board shall immediately notify such person in writing and such person shall have the right to file a petition within thirty (30) days thereafter for a hearing in the matter in the district court in the county wherein such person shall reside and such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon thirty (30) days' written notice to the county attorney of the county wherein the appeal is filed and such county attorney shall represent the state, and thereupon the court shall take testimony and examine into the facts of the case, except that the issues shall be limited to whether a peace officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, whether the person was placed under arrest and whether such person refused to submit to the test. The court shall thereupon determine whether the petitioner is entitled to a license or is subject to suspension as heretofore provided.

(b) Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor, evidence of the amount of alcohol in the person's blood at the time of the act alleged as shown by a chemical analysis of his blood, breath, or urine is admissible.

(c) If the person under arrest refused to submit to the test as hereinabove provided, proof of refusal shall be admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor.

(d) The provisions of this act do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of intoxicating liquor.

History: En. Sec. 2, Ch. 131, L. 1971.

**32-2142.3. Administration of tests.** (a) Only a physician or registered nurse acting at the request of a peace officer may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of breath or urine specimens.

(b) The person tested may, at his own expense, have a physician or registered nurse, of his own choosing administer a test, in addition to any administered at the direction of a peace officer, for the purpose of determining the amount of alcohol in his blood at the time alleged as shown by chemical analysis of his blood, breath or urine. The failure or inability to obtain an additional test by a person shall not preclude the admissibility in evidence of the test taken at the direction of a peace officer.

(c) Upon the request of the person tested full information concerning the test taken at the direction of the peace officer shall be made available to him or his attorney.

(d) No physician or registered nurse shall incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer such a test.

(e) If the test given under the preceding section is a chemical test of urine, the person tested shall be given such privacy in the taking of the urine specimen as will insure the accuracy of the specimen and, at the same time, maintain the dignity of the individual involved.

(f) The Montana highway patrol board in co-operation with the state board of health or any other appropriate agency, shall adopt uniform standards for the giving of blood alcohol tests and may require certification of training to administer such tests as deemed necessary.

History: En. Sec. 3, Ch. 131, L. 1971.

#### Separability Clause

Section 4 of Ch. 131, Laws 1971 read "If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or

application and to this end the provisions of this act are declared to be severable."

#### Repealing Clause

Section 5 of Ch. 131, Laws 1971 repealed all acts and parts of acts in conflict therewith.

#### Cross-References

State department of health abolished and functions transferred, sec. 82A-602 (1).

**32-2143.1. Permission of authorities to hold speed contest.** No race or contest for speed shall be held and no person shall engage in or aid or abet in any motor vehicle speed contest or exhibition of speed on a public highway or street without written permission of the authorities of the state, county or city having jurisdiction and unless the same is fully and efficiently patrolled for the entire distance over which such race or contest for speed is to be held.



**History:** En. Sec. 1, Ch. 100, L. 1967.

**Title of Act**

An act prohibiting speed contests and "drag racing" on the public highways or

streets unless written permission is granted by the authorities having jurisdiction over such highways or streets; fixing penalty for violation of act.

**32-2143.2. Penalty for unauthorized drag racing.** Any person convicted for violation of this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500) or by imprisonment in the county or city jail for not more than six (6) months, or by both such fine and imprisonment.

**History:** En. Sec. 2, Ch. 100, L. 1967.

**32-2144. Speed restrictions—basic rule.** (a) A person operating or driving a vehicle of any character on a public highway of this state shall drive it in a careful and prudent manner, and at a rate of speed no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account the amount and character of traffic, condition of brakes, weight of vehicle, grade and width of highway, condition of surface, and freedom of obstruction to view ahead, and he shall drive it so as not to unduly or unreasonably endanger the life, limb, property, or other rights of a person entitled to the use of the street or highway.

(b) Where no special hazard exists that requires lower speed for compliance with paragraph (a) of this section, the speed of a vehicle not in excess of the limits specified in this section or established as authorized in sections 32-2145, 32-2146, 32-2147, and 32-2149 is lawful, but a speed in excess of those limits is unlawful:

1. Twenty-five (25) miles per hour in an urban district;
2. Thirty-five (35) miles per hour on a highway under construction or repair;
3. Fifty-five (55) miles per hour in other locations during the nighttime, except that the nighttime speed limit on completed sections of interstate highways is sixty-five (65) miles per hour.

"Daytime" means from a half ( $\frac{1}{2}$ ) hour before sunrise to a half ( $\frac{1}{2}$ ) hour after sunset. "Nighttime" means at any other hour.

The speed limits set forth in this section may be altered by the highway commission as authorized in sections 32-2145, 32-2146, and 32-2149.

(c) The driver of a vehicle shall, consistent with paragraph (a), drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon a narrow or winding roadway, and when a special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway condition.

**History:** En. Sec. 41, Ch. 263, L. 1955; amd. Sec. 1, Ch. 190, L. 1967; amd. Sec. 55, Ch. 316, L. 1974.

**Amendments**

The 1967 amendment added the exception concerning interstate highways at

the end of the first paragraph of subdivision 3 of subsection (b).

The 1974 amendment substituted "as authorized in sections 32-2145, 32-2146, 32-2147, and 32-2149" in subsection (b) for "as hereinafter authorized"; deleted "however, the Montana highway com-

mission shall have the authority to establish reduced night speed limits on curves and other dangerous locations as set forth in section 32-2145, R. C. M. 1947" from subdivision (b)(3); inserted "by the highway commission" after "may be altered" in the last paragraph of subdivision (b)(3); added "and 32-2149" to the end of the last paragraph in subdivision (b)(3); and made minor changes in phraseology and punctuation.

#### **Ordinary Negligence**

This section refers to ordinary, pru-

dent driving standards, and therefore is a standard for ordinary negligence and not gross negligence required for recovery by guest in action against driver. *Hoffman v. Herzog*, 158 M 296, 491 P 2d 713.

#### **Snow Conditions**

Mere showing of a collision killing a horse in open range country, an icy road condition and existence of uninterpreted skid marks failed to show violation of subdivision (a) of this section. *Fries v. Shaughnessy*, 159 M 307, 496 P 2d 1159.

### **32-2144.1. Declaration of speed limits—exception to the basic rule.**

The attorney general shall declare by proclamation filed with the secretary of state a speed limit for all motor vehicles on all public streets and highways in the state whenever the establishment of such a speed limit by the state is required by federal law as a condition to the state's continuing eligibility to receive funds authorized by the Federal Aid Highway Act of 1973 and all acts amendatory thereto or any other federal statute. Such speed limit may not be less than that required by federal law, and the attorney general shall by further proclamation, change the speed limit adopted pursuant to this act to comply with federal law. Any proclamation issued pursuant to this act becomes effective at midnight of the day upon which it is filed with the secretary of state. A speed limit imposed pursuant to this act is an exception to the basic rule requirements of section 32-2144 and a speed in excess of the speed limit established pursuant to this act is unlawful notwithstanding any provision of that section.

**History:** En. 32-2144.1 by Sec. 1, Ch. 60, L. 1974.

#### **Title of Act**

An act directing the attorney general to declare by order a speed limit as re-

quired by federal law on all public streets and highways in the state except in those areas where a speed limit lower than that required by federal law is presently applicable; and providing an effective date.

**32-2144.2. Not applicable to certain streets and highways.** The provisions of this act shall not apply to those public streets and highways for which a speed limit lower than that required by federal law was applicable on the effective date of this act under any other state, county, municipal or other local law, ordinance, regulation or order.

**History:** En. 32-2144.2 by Sec. 2, Ch. 60, L. 1974.

**32-2144.3. Termination of declaration.** The attorney general shall terminate by proclamation any speed limit proclaimed under this act whenever such a speed limit is no longer required by federal law as a condition to the state's continuing eligibility to receive funds authorized by the Federal Aid Highway Act of 1973 and all acts amendatory thereto or from any other federal statute.

**History:** En. 32-2144.3 by Sec. 3, Ch. 60, L. 1974.

**32-2144.4. Subject to Administrative Procedure Act.** The establishment of a speed limit pursuant to section 1 of this act [32-2144.1] shall not be subject to the provisions and requirements of the Montana Administrative Procedure Act, section 82-4201, R. C. M. 1947, et seq.

**History:** En. 32-2144.4 by Sec. 4, Ch. 60, L. 1974.

**32-2144.5. Lower speed limits.** Nothing in this act shall prohibit any state, county, municipal or other local official, board, or body which has authority to enact laws relating to motor vehicle speed limits from establishing speed limits lower than that required by federal law on any public streets or highways as permitted by law on the effective date of this act.

**History:** En. 32-2144.5 by Sec. 5, Ch. 60, L. 1974.

**32-2144.6. Enforcement.** (1) A person violating the speed limit imposed pursuant to section 1 of this act [32-2144.1] is guilty of the offense of unnecessary waste of a resource currently in short supply and upon conviction shall be fined not to exceed five dollars (\$5) and no jail sentence may be imposed. Bond for this offense shall be five dollars (\$5). For the purpose of this act only, the fees of the justice of the peace shall be four dollars (\$4) to be remitted as set forth in section 25-311.

**History:** En. 32-2144.6 by Sec. 6, Ch. 60, L. 1974; amd. Sec. 1, Ch. 248, L. 1974. omitted in the amendment of the section by Sec. 1, Ch. 248, Laws 1974.

#### Compiler's Notes

Section 6 of Ch. 60, Laws 1974, contains a subsection (2) reading as follows: "No violation of this act shall be recorded or charged against the driver's record of a person convicted of violating this act and that [sic] no insurance company shall hold a violation of this act against the insured and there shall be no increase in premiums due to a violation of this act." Subsection (2) was

#### Amendments

Chapter 248, Laws of 1974, inserted the bracketed reference to "32-2144.1" in subsection (1); added the last sentence to subsection (1); and deleted subsection (2) as set forth in the Compiler's Notes, above.

#### Effective Date

Section 2 of Ch. 248, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 21, 1974.

**32-2144.7. Existing statutes not affected.** This act in no way affects traffic control statutes and violation of existing statutes shall be prosecuted solely as provided therein.

**History:** En. 32-2144.7 by Sec. 7, Ch. 60, 1974.

#### Effective Date

Section 8 of Ch. 60, Laws 1974 pro-

vided the act should be in effect from and after its passage and approval. Approved March 2, 1974.

**32-2145. Establishment of special speed zones.** (1) If the department of highways determines upon the basis of an engineering and traffic investigation that a speed limit set by section 32-2144 is greater or less than is reasonable or safe under the conditions found to exist at an intersection, curve, dangerous location, or any other part of a highway



under its jurisdiction, the commission may set a reasonable and safe special speed limit at that part.

(2) The department shall erect and maintain appropriate signs giving notice of these special limits. When they are erected, the limits are effective at that part at all times, or at other times the commission sets.

(3) The authority of the commission under this section includes the authority to set reduced nighttime speed limits on curves and other dangerous locations.

(4) This section does not authorize the commission to set a statewide speed limit.

History: En. Sec. 41, Ch. 263, L. 1955; amd. Sec. 1, Ch. 190, L. 1967; amd. Sec. 56, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment rewrote this section. For prior version, see parent volume.

**32-2146. When local authorities may and shall alter limits.** (a) If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under this act is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit thereon which:

1. Decreases the limit at intersection; or
2. Increases the limit within an urban district, but not to more than fifty-five (55) miles per hour during the nighttime; or
3. Decreases the limit outside an urban district, but not to less than thirty-five (35) miles per hour.

(b) A local authority in its jurisdiction shall determine by an engineering and traffic investigation the proper speed for all arterial streets and shall set a reasonable and safe limit thereon which may be greater or less than the speed permitted under this act for an urban district.

(c) An altered limit established as authorized under this section is effective at all times or at other times determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.

(d) The commission has exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions thereof in all municipalities or urban areas. The commission shall set these limits in accordance with section 32-2145.

History: En. Sec. 43, Ch. 263, L. 1955; amd. Sec. 1, Ch. 89, L. 1971; amd. Sec. 57, Ch. 316, L. 1974.

#### Amendments

The 1971 amendment substituted a new subsection (d) for a subsection reading "Any alteration of speed limits on state highways or extensions thereof in a municipality by local authorities shall not

be effective until such alteration has been approved by the commission."

The 1974 amendment deleted "or during hours of darkness" after "at all times" in subsection (c); inserted "by the authority" after "determined" in subsection (c); substituted reference to section 32-2145 in subsection (d) for reference to section 32-2144; and made minor changes in phraseology and punctuation.

**32-2147. Minimum speed regulations.** (a) A person may not drive a motor vehicle at a speed slow enough to impede or block the normal

and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

On a two-lane highway where passing is unsafe because of traffic in the opposite direction or other conditions, a slow-moving vehicle, including a passenger vehicle, behind which four (4) or more vehicles are formed in line, shall turn off the roadway at the nearest place designated as a turnout by signs erected by the authority having jurisdiction over the highway, or wherever sufficient area for a safe turnout exists, in order to permit the vehicles following it to proceed. As used in this section a slow-moving vehicle is one which is proceeding at a rate of speed less than the normal flow of traffic at the particular time and place. The department of highways is authorized to designate and construct such turnouts and to erect signs at appropriate places advising motorists of this statute.

(b) If the department of highways or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the commission or the local authority may set a minimum speed limit below which a person may not drive a vehicle except when necessary for safe operation or in compliance with law.

History: En. Sec. 44, Ch. 263, L. 1955; amd. Sec. 1, Ch. 387, L. 1973; amd. Sec. 58, Ch. 316, L. 1974.

#### Amendments

The 1973 amendment deleted from subsection (a) a second paragraph relating to police directions to slow drivers; and added the present second and third paragraphs to subsection (a).

The 1974 amendment substituted "department of highways" for "board" at the beginning of subsection (b); substituted "commission" for "board" near the middle of subsection (b); and made minor changes in phraseology.

#### Effective Date

Section 2 of Ch. 387, Laws 1973 provided the act should be in effect from and

after its passage and approval. Approved March 20, 1973.

#### Instructions

Where plaintiff's son was killed when car in which he was riding struck rear of defendant's truck which had just turned onto highway, it was reversible error for court to instruct jury on slow speed statute (this section) without requiring that plaintiff show truck had been on road sufficient time to attain a normal speed. *Hageman v. Townsend*, 144 M 510, 398 P 2d 612.

#### Purpose

The purpose of this section is rooted in the recognition that the slow driver may be the cause of fatal highway accidents as well as the fast driver. *Hageman v. Townsend*, 144 M 510, 398 P 2d 612.

**32-2148. Special speed limitations on trucks, truck-tractors, motor-driven cycles and vehicles towing house trailers.** (a) No person shall operate any truck or truck-tractor the gross weight of which exceeds eight thousand (8,000) pounds at a speed greater than sixty-five (65) miles per hour on those completed sections of interstate and four-lane divided highways, and sixty (60) miles per hour on those completed sections of primary and secondary highways; provided, however, that truck nighttime speed limit shall not exceed that of automobiles as stated in section 32-2144, R. C. M. 1947.

(b) and (c) \* \* \* [Same as parent volume.]

History: En. Sec. 45, Ch. 263, L. 1955; 1, Ch. 119, L. 1961; amd. Sec. 1, Ch. 253, amd. Sec. 1, Ch. 241, L. 1957; amd. Sec. L. 1971.

**Amendments**

The 1971 amendment substituted "sixty-five (65) miles per hour \* \* \* as stated

in section 32-2144, R. C. M. 1947" for "fifty (50) miles per hour" at the end of subsection (a).

**32-2149. Special speed limitations.** (a) A person may not drive a vehicle equipped with solid rubber or cushion tires at a speed greater than ten (10) miles per hour.

(b) A person may not drive a vehicle over a bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to the bridge or structure, when the structure is signposted as provided in this section.

(c) The department of highways upon request from a local authority may, or upon its own initiative shall, conduct an investigation of a bridge or other elevated structure constituting a part of a highway, and if it finds on investigation that the structure cannot safely withstand vehicles traveling at the speed otherwise permissible under this act, the commission shall set the maximum speed of vehicles which the structure can withstand, and the department shall erect and maintain suitable signs stating the maximum speed at a distance of not less than one hundred (100) feet before each end of the structure.

(d) Upon the trial of a person charged with a violation of this section, proof of the setting of the maximum speed by the commission and the existence of the signs is conclusive evidence of the maximum speed which can be maintained with safety to the bridge or structure.

**History:** En. Sec. 46, Ch. 263, L. 1955; amd. Sec. 59, Ch. 316, L. 1974.

"commission" for "board" before "shall set" in subsection (c) and in subsection (d); inserted "department" before "shall erect and maintain" in subsection (c); and made minor changes in phraseology and punctuation.

**Amendments**

The 1974 amendment substituted "department of highways" for "board" at the beginning of subsection (c); substituted

**32-2150.3. Erection of signs.** (a) No operator of a motor vehicle may be arrested under this act unless signs have been placed at or near the state line on the primary highway system, outside towns or cities having over two thousand five hundred (2,500) population, and outside county seats on the primary highways to indicate the legal rate of speed.

(b) \* \* \* [Same as parent volume.]

(c) Signs giving notice that the speed of vehicles may be measured by radiomicro waves or other electrical device shall be placed as required for speed signs in subsection (a) above, provided, however, that the absence of such signs shall not, in itself, invalidate an otherwise proper arrest.

**History:** En. Sec. 3, Ch. 120, L. 1959; amd. Sec. 1, Ch. 205, L. 1974.

that the speed of vehicles may be measured by radiomicro waves or other electrical device" from the end of subsection (a) after "legal rate of speed"; and added subsection (c).

**Amendments**

The 1974 amendment deleted "radar" before "signs" in the caption; deleted "and

**32-2151. Drive on right side of roadway—exceptions.**

**Application**

Defendant's proposed instruction in au-

tomobile accident case placing duty upon plaintiff to drive on right side of roadway



at all times and under all conditions, and which made plaintiff absolutely negligent as matter of law if she failed to do so, was not entirely correct statement of law and therefore properly refused since this section and section 32-2153 provide exceptions to rule that one must drive upon right side of roadway. *Lamb v. Page*, 153 M 171, 455 P 2d 337.

#### **Backing over Center-line**

Where the evidence conclusively estab-

lished that defendant's tractor-trailer was backed over the highway center-line into decedent's traffic lane, defendant's driver was negligent as a matter of law. *Hurly v. Star Transfer Co.*, 141 M 176, 376 P 2d 504, 507.

#### **References**

*Williams v. Wallace*, 143 M 11, 386 P 2d 744.

### **32-2152. Passing vehicles proceeding in opposite directions.**

#### **References**

Cited in *Hurly v. Star Transfer Co.*,

141 M 176, 376 P 2d 504, 507; *Williams v. Wallace*, 143 M 11, 386 P 2d 744.

### **32-2153. Overtaking a vehicle on the left.**

#### **Duty of Overtaking Vehicle**

Undisputed evidence that defendant waited until he was 20 to 25 feet behind plaintiff's vehicle, which was traveling at 55 m.p.h., before moving to the left to pass on an interstate with divided lanes and a clear passing lane, showed that de-

fendant was negligent in following too closely under the conditions, and summary judgment for plaintiff on issue of liability was proper even though there was evidence that defendant's power steering failed when he tried to move to left. *Farris v. Clark*, 158 M 33, 487 P 2d 1307.

### **32-2156. Further limitations on driving to left of center, etc.**

#### **Contributory Negligence**

Plaintiff driving to the left side of the roadway while within one hundred feet of or traversing an intersection in attempting to pass truck was guilty of contributory negligence in collision with truck attempting to make a left turn. *Rader v. Nicholls*, 140 M 459, 373 P 2d 312, 313.

Where plaintiff attempted to pass defendant's truck 250 feet from unmarked intersection, and was struck by defendant's truck as it started to make a left-hand turn, in reconciling this section with section 32-2133, which provides for a uniform system of traffic control devices, it was not error on the judge's part to refuse to instruct the jury on the provisions of this section. *Graveley v. Springer*, 145 M 486, 402 P 2d 41.

#### **Intersection**

An intersection is formed when two publicly maintained ways join at any angle. *Rader v. Nicholls*, 140 M 459, 373 P 2d 312, 313.

#### **Reliance on Markings**

Defendant, who attempted to pass plaintiff's truck within one hundred feet of intersection, in violation of this section, was not negligent per se, since defendant was entitled to rely on the broken white center line, which indicated that passing could be done lawfully at the point where the accident occurred. *Faucette v. Christensen*, 145 M 28, 400 P 2d 883.

#### **Turning Vehicle**

Plaintiff traveling at slow rate of speed on highway and indicating left turn with automatic signal, then turning left onto country road, was exercising proper care in turning, and driver, who struck plaintiff while attempting to pass while plaintiff was turning was negligent and proximate cause of accident, even though area may not have been an intersection within the meaning of this section and even though highway markings did not prohibit passing. *Gammel v. Dees*, 159 M 461, 498 P 2d 1204.

**32-2157. No-passing zones.** (a) The department of highways may determine those portions of a highway where overtaking and passing or driving to the left of the roadway would be especially hazardous, and it may by appropriate signs or markings on the roadway indicate the beginning and end of these zones. When the signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the directions of those signs.

(b) Where signs or markings are in place to define a no-passing zone as set forth in paragraph (a) a driver may not drive on the left side of the roadway within the no-passing zone or on the left side of a pavement striping designed to mark the no-passing zone throughout its length.

History: En. Sec. 54, Ch. 263, L. 1955; amd. Sec. 1, Ch. 97, L. 1957; amd. Sec. 60, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "department of highways" for "commission" in subsection (a); and made minor changes in phraseology.

#### Duty of Other Driver

This section does not absolve a driver intending to turn left from the obligation under section 32-2167 of making certain that the turn can be made with reasonable safety so that plaintiff was contributorily negligent in failing to look to the rear before turning even though defendant was passing him in a no-passing zone. *Bellon v. Heinzig*, 347 F 2d 4.

**32-2158. One-way roadways and rotary traffic islands.** (a) The department of highways may designate a highway or a separate roadway under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice of that designation.

(b) Upon a roadway designated and signposted for one-way traffic a vehicle may be driven only in the direction designated.

(c) A vehicle passing around a rotary traffic island may be driven only to the right of such island.

History: En. Sec. 55, Ch. 263, L. 1955; amd. Sec. 61, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment of highways" for "commission" in subsection (a); and made minor changes in phraseology.

### 32-2159. Driving on roadways laned for traffic.

#### Backing over Center-line

Where the evidence conclusively established that defendant's tractor-trailer was backed over the highway center-line into

decendent's traffic lane, defendant's driver was negligent as a matter of law. *Hurly v. Star Transfer Co.*, 141 M 176, 376 P 2d 504, 507.

### 32-2160. Following too closely.

#### Preparing to Overtake

Undisputed evidence that defendant, rapidly approaching from behind, waited until he was 20 to 25 feet from plaintiff's vehicle, which was traveling at 55 m.p.h., before moving to the left to pass on an interstate with divided lanes and a clear passing lane, showed that defendant was

negligent in following too closely under the conditions, and summary judgment for plaintiff on issue of liability was proper even though there was evidence that defendant's power steering failed when he tried to move to left. *Farris v. Clark*, 158 M 33, 487 P 2d 1307.

**32-2163. Restrictions on use of controlled access roadway.** (1) The department of highways may by rule and local authorities may by ordinance prohibit the use of a controlled access highway under their respective jurisdictions by pedestrians, bicycles or other nonmotorized traffic or by a person operating a motor-driven cycle.

(2) The department or the local authority which adopts the prohibitory regulation shall erect and maintain official signs on the controlled access roadway on which these regulations are applicable. It is unlawful for a person to violate the restrictions stated on those signs.

History: En. Sec. 60, Ch. 263, L. 1955; amd. Sec. 62, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment rewrote subsection

(1) (for prior version, see parent volume); substituted "department" for "commission" in subsection (2); and made minor changes in phraseology, punctuation and style.

### 32-2166. Starting parked vehicle.

#### Four Way Stops

The vehicle approaching from the right that would otherwise have the right of way loses the preference on approaching a four way stop because it is required to stop; where two drivers approached a four

way stop, neither had a statutory right of way or "preferred" or "favored" driver status and both were required to exercise ordinary care as they proceeded into or through the intersection. *Elliott v. Hansen*, — M —, 519 P 2d 411.

### 32-2167. Turning movements and required signals.

#### Duty To Look to Rear

Since there is no exception to this section for unlawful passing, plaintiff had the affirmative duty to look to the rear, as well as forward, and was contributorily negligent in not looking to the rear before making a left-hand turn, since he could not rely on the presumption that he would not be passed in a no-passing zone. *Bellon v. Heinzig*, 347 F 2d 4.

#### Knowledge of Safety Not Required

This section requires that a person making a turning movement take reasonable precautions under the circumstances, but it does not require that such person know with absolute certainty that the turning movement can be made with safety. *Holland v. Konda*, 142 M 536, 385 P 2d 272, 6 ALR 3d 824.

32-2170. Vehicle approaching or entering intersection. (a) When two (2) vehicles enter or approach an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.

(b) The right of way rule declared in paragraph (a) is modified at through highways and otherwise as hereinafter stated in this article.

History: En. Sec. 67, Ch. 263, L. 1955; amd. Sec. 1, Ch. 175, L. 1965.

pealed all acts and parts of acts in conflict therewith.

#### Amendment

The 1965 amendment deleted a former paragraph (a), for text of which see parent volume; appropriately redesignated the remaining paragraphs; inserted "or approach" after "enter" near the beginning of present paragraph (a); and deleted from present paragraph (b) a reference to former paragraph (a).

#### Four Way Stops

The vehicle approaching from the right that would otherwise have the right of way loses the preference on approaching a four way stop because it is required to stop; where two drivers approached a four way stop, neither had a statutory right of way or "preferred" or "favored" driver status and both were required to exercise ordinary care as they proceeded into or through the intersection. *Elliott v. Hansen*, — M —, 519 P 2d 411.

#### Repealing Clause

Section 2 of Ch. 175, Laws 1965 re-

### 32-2171. Vehicle turning left at intersection.

#### Additional Duties

This section does not purport to catalogue all the rights and duties of a driver intending to turn left and does not negate the existence of an additional duty to maintain a proper lookout for vehicles approaching from the rear, even where

plaintiff was making a left turn in a no-passing zone. *Bellon v. Heinzig*, 347 F 2d 4.

#### References

United States v. Clark, 247 F Supp 958.

### 32-2172. Vehicle entering through highway or stop intersection.

#### Four Way Stops

The vehicle approaching from the right that would otherwise have the right of

way loses the preference on approaching a four way stop because it is required to stop; where two drivers approached a four



way stop, neither had a statutory right of way or "preferred" or "favored" driver status and both were required to exercise

ordinary care as they proceeded into or through the intersection. *Elliott v. Hansen*, — M —, 519 P 2d 411.

**32-2173. Vehicle entering highway from private road, driveway or public approach ramp.** The driver of a vehicle about to enter or cross a highway from a private road, driveway or public approach ramp shall yield the right of way to all vehicles approaching on said highway.

**History:** En. Sec. 70, Ch. 263, L. 1955; amd. Sec. 1, Ch. 52, L. 1965.

**Public Approach Ramp**

Exit on state right of way from gravel road intersecting paved frontage road to interstate highway was public approach ramp within meaning of this section. *Pachek v. Norton Concrete Co.*, — M —, 499 P 2d 766.

**Amendment**

The 1965 amendment inserted "or public approach ramp."

**32-2174. Vehicles approaching "Yield" sign.** When the intersection is designated by the department of highways, or the local authority having jurisdiction, as a "Yield" intersection, the driver of a vehicle approaching the "Yield" sign shall slow to a speed of not more than fifteen (15) miles per hour and yield right of way to all vehicles approaching from the right or left on the intersecting roads, or streets, which are so close as to constitute an immediate hazard. If a driver is involved in a collision at an intersection or interferes with the movement of other vehicles after driving past a "Yield" sign, such collision or interference shall be deemed evidence of the driver's failure to yield right of way.

**History:** En. Sec. 71, Ch. 263, L. 1955; amd. Sec. 1, Ch. 96, L. 1963; amd. Sec. 63, Ch. 316, L. 1974.

The 1974 amendment substituted "department of highways" for "commission" in the first sentence.

**Amendments**

The 1963 amendment deleted "Right of Way" following "Yield" within the quotation marks in three places.

**Effective Date**

Section 2 of Ch. 96, Laws 1963 provided the act should be in effect after its passage and approval. Approved February 28, 1963.

**32-2177. Pedestrians' right of way in crosswalk.** (a) and (b). \* \* \* [Same as parent volume.]

(c) It is unlawful for any person to drive a motor vehicle through a column of school children crossing a street or highway or past a member of the school safety patrol while the member of the school safety patrol is directing the movement of children across a street or highway and while the school safety patrol member is holding his official signal in the stop position.

**History:** En. Sec. 74, Ch. 263, L. 1955; amd. Sec. 1, Ch. 54, L. 1965.

all acts and parts of acts in conflict therewith.

**Amendment**

The 1965 amendment added subsection (c).

**Effective Date**

Section 3 of Ch. 54, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 25, 1965.

**Repealing Clause**

Section 2 of Ch. 54, Laws 1965 repealed

**32-2191. Obedience to signal indicating approach of train.**

**Jury Instructions**

Failure of trial court to instruct jury

that decedent had been contributorily negligent if he failed to stop, look and

listen when either tracks or highway signs indicated the presence of a railway crossing was reversible error. *O'Brien v. Great Northern Ry. Co.*, 145 M 13, 400 P 2d 634, cert. den. 387 US 920, 87 S Ct 2034.

**32-2192. All vehicles must stop at certain railroad grade crossings.** The department of highways and local authorities may designate particularly dangerous highway grade crossings of railroads and erect stop signs at these crossings. When these stop signs are erected, the driver of a vehicle shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of the railroad and shall proceed only upon exercising due care.

**History:** En. Sec. 89, Ch. 263, L. 1955; amd. Sec. 64, Ch. 316, L. 1974.      partment of highways" for "commission" in the first sentence; and made minor changes in phraseology and punctuation.

**Amendments**

The 1974 amendment substituted "de-

**32-2195. Vehicles must stop at stop signs.** (a) The department of highways with reference to state highways and local authorities with reference to other highways under their jurisdiction may designate through highways and erect stop signs at specified entrances to these highways or may designate an intersection as a stop intersection and erect similar signs at one (1) or more entrances to that intersection.

(b) The sign shall bear the word "Stop" in letters not less than eight (8) inches in height, and it shall be made luminous at nighttime by steady or flashing internal illumination, or by a fixed floodlight projected on the face of the sign, or by efficient reflecting elements on the face of the sign.

(c) The stop sign shall be erected as near as practicable to the nearest line of the crosswalk on the near side of the intersection or, if there is no crosswalk, then as close as practicable to the nearest line of the roadway.

(d) A driver of a vehicle approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection, or in the event there is no crosswalk, he shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection except when directed to proceed by a police officer or highway patrolman or traffic-control signal.

**History:** En. Sec. 92, Ch. 263, L. 1955; amd. Sec. 65, Ch. 316, L. 1974.      that would otherwise have the right of way loses the preference on approaching a four way stop because it is required to stop; where two drivers approached a four way stop, neither had a statutory right of way or "preferred" or "favored" driver status and both were required to exercise ordinary care as they proceeded into or through the intersection. *Elliott v. Hansen*, — M —, 519 P 2d 411.

**Amendments**

The 1974 amendment substituted "department of highways" for "commission" in subsection (a); and made minor changes in phraseology and punctuation.

**Four Way Stops**

The vehicle approaching from the right

**32-2197. Overtaking and passing school bus.** (a) The driver of a vehicle upon a highway outside the corporate limits of any city or town upon meeting or overtaking from either direction any school bus which

has stopped on the highway for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus when there is in operation on said bus a visual flashing red signal as specified in section 32-21-132 and said driver shall not proceed until such school bus resumes motion, and in addition the driver of a vehicle must slow and proceed with caution when meeting or overtaking from either direction any school bus which is preparing to stop on the highway for the purpose of receiving or discharging any school children as indicated by flashing amber lights as specified in section 32-21-132.

(b) Every bus used for the transportation of school children shall bear upon the front and rear thereof plainly visible signs containing the words "SCHOOL BUS" in letters not less than eight (8) inches in height, and in addition shall be equipped with visual signals meeting the requirements of section 32-21-132. Amber flashing lights shall be actuated by the driver approximately one hundred and fifty (150) feet in cities, and approximately five hundred (500) feet in other areas before the bus is stopped to receive or discharge school children. Red lights shall be actuated by the driver of said school bus whenever but only whenever such vehicle is stopped on the highway for the purpose of receiving or discharging school children.

(c) and (d). \* \* \* [Same as parent volume.]

**History:** En. Sec. 94, Ch. 263, L. 1955; amd. Sec. 1, Ch. 100, L. 1961; amd. Sec. 2, Ch. 250, L. 1965; amd. Sec. 1, Ch. 45, L. 1971.

#### Amendments

The 1965 amendment inserted "or is preparing to stop" after "which has stopped" in subsection (a); divided subsection (b) into the present first and third sentences of subsection (b); inserted the second sentence in subsection (b); and substituted "Red lights" for "which" at the beginning of the third sentence of subsection (b).

The 1971 amendment deleted "or is preparing to stop" after "any school bus which has stopped" in subsection (a); inserted "flashing red" before "signal" at the middle part of the section; deleted "or is signaled by the school bus driver to proceed as the visual signals are no longer actuated" from the end of subsection (a); and added "and in addition the driver \* \* \* as specified in section 32-21-132" at the end of subsection (a).

#### Cross-References

Lettering requirement under school code, sec. 75-7002.

**32-2198. Special lighting equipment on school buses.** It shall be unlawful to operate any flashing warning signal light on any school bus except when any said school bus is preparing to stop or is stopped on a highway for the purpose of permitting school children to board or alight from said school bus.

**History:** En. Sec. 95, Ch. 263, L. 1955; amd. Sec. 3, Ch. 250, L. 1965.

#### Amendment

The 1965 amendment inserted "is preparing to stop or" before "is stopped."

#### 32-2199. Stopping, standing, or parking, etc.

##### Visibility Impaired

This section prohibits stopping in a traffic lane even under weather conditions

causing poor visibility. Kirby v. Kelly, — M —, 504 P 2d 683.

#### 32-21-101. Stopping, standing, or parking prohibited in specified places.

##### Negligence as Matter of Law

Crane driver whose crane was blocking bridge was not negligent as matter of

law even though he parked crane on bridge in violation of statute proscribing drivers from parking vehicles upon bridge



where suit was between driver of automobile which stopped to avoid crane and driver of second automobile which rear-

ended first. *Jimison v. United States*, 427 F 2d 1133, affirming 267 F Supp 674.

**32-21-102. Additional parking regulations.** (a) Except as otherwise provided in this section, a vehicle stopped or parked upon a roadway where there are adjacent curbs shall be stopped or parked with the right-hand wheels of the vehicle parallel to and within eighteen (18) inches of the right-hand curb.

(b) A local authority may by ordinance permit parking of a vehicle with the left-hand wheels adjacent to and within eighteen (18) inches of the left-hand curb of a one-way roadway.

(c) A local authority may by ordinance permit angle parking on a roadway, except that angle parking shall not be permitted on any federal-aid or state highway unless the department of highways determines that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

(d) The department with respect to highways under its jurisdiction may place signs prohibiting or restricting the stopping, standing, or parking of vehicles on a highway where in its opinion this stopping, standing, or parking, is dangerous to those using the highway or where the stopping, standing, or parking of vehicles would unduly interfere with the free movement of traffic on it. These signs shall be official signs, and a person may not stop, stand, or park a vehicle in violation of the restrictions stated on these signs.

**History:** En. Sec. 99, Ch. 263, L. 1955; amd. Sec. 66, Ch. 316, L. 1974.

#### **Amendments**

The 1974 amendment substituted "de-

partment of highways" for "commission" in subsection (c) and "department" for "commission" in subsection (d); and made minor changes in phraseology and punctuation.

**32-21-105. Riding on motorcycles.** (1) A person operating a motorcycle on public streets or highways shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one (1) person, in which event a passenger may ride upon the permanent and regular seat if designed for two (2) persons, or upon another seat firmly attached to the rear or side of the operator.

(2) No passenger shall be carried in a position that will interfere with the operation of the motorcycle or the view of the operator.

(3) No person operating a motorcycle shall carry any packages, bundles, or articles which would interfere with the operation of said vehicle in a safe and prudent manner.

(4) "Side saddle" riding on a motorcycle is prohibited.

(5) Motorcycles are to be operated with lights on at all times when operated on any public highway or street.

(6) Not more than two (2) motorcycles shall be operated side by side in a single traffic lane.

(7) All motor vehicles including motorcycles, are entitled to the full use of a traffic lane, and no vehicle shall be driven or operated in such a

manner so as to deprive any other vehicle of the full use of a traffic lane, except that motorcycles may, with the consent of both drivers, be operated not more than two (2) abreast in a single traffic lane.

(8) Every person riding a motorcycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a motor vehicle except as to those provisions which, by their nature, can have no application.

**History:** En. Sec. 102, Ch. 263, L. 1955; amd. Sec. 1, Ch. 175, L. 1967.

first paragraph as subsection (1); inserted "on public streets or highways" after "motorcycle" in that subsection; and added subsections (2) through (8).

**Amendments**

The 1967 amendment numbered the

**32-21-105.1. Headgear required for motorcycle riders—noise suppression devices.** (1) The operator and passenger, if any, of any motorcycle operated upon the streets or highways of this state shall wear protective headgear upon the head. Such headgear shall meet standards established by the department of justice.

(2) All motorcycles operated on the streets and highways of this state shall be equipped at all times with noise suppression devices, including an exhaust muffler, in good working order, and in constant operation. In addition, all motorcycles operating on streets and highways shall meet the following noise decibel limitations, on the standard A scale, such decibel limitations to be measured at fifty (50) feet distant from the closest point to the motorcycle:

1. Any motorcycle manufactured prior to 1970	92 db(A)
2. Any motorcycle manufactured after 1969 but prior to 1973	88 db(A)
3. Any motorcycle manufactured after 1972 but prior to 1975	86 db(A)
4. Any motorcycle manufactured after 1974 but prior to 1978	80 db(A)
5. Any motorcycle manufactured after 1977 but prior to 1988	75 db(A)
6. Any motorcycle manufactured after 1987	70 db(A).

(3) A person convicted of the violation of subsection (1), above, shall be fined five dollars (\$5).

(4) A person convicted of the violation of subsection (2), above, shall be punished by a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100) or by imprisonment for not more than ten (10) days or by both such fine and imprisonment for the first such conviction; for a second conviction within one (1) year thereafter such person shall be punished by a fine of not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200) or by imprisonment for not more than twenty (20) days or by both such fine and imprisonment; upon a third or subsequent conviction within one (1) year after the first conviction such person shall be punished by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) or by imprisonment for not more than six (6) months or by both such fine and imprisonment.

**History:** En. Sec. 1, Ch. 398, L. 1973; amd. Sec. 1, Ch. 179, L. 1974; amd. Sec. 1, Ch. 273, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 179 and once by Ch. 218. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made

a composite section embodying the changes made by both amendments.

#### Title of Act

An act to regulate the operation of motorcycles.

#### Amendments

Chapter 179, Laws of 1974, added the provisions pertaining to decibel noise limits to subsection (2).

Chapter 273, Laws of 1974, added subsections (3) and (4).

### 32-21-108. Coasting prohibited.

#### Emergency Action

Violation of this section by traveling on a downgrade with the clutch manually disengaged was not negligence per se

where violation was involuntary in an emergency due to circumstances beyond driver's control. *Duchesneau v. Silver Bow County*, 158 M 369, 492 P 2d 926.

**32-21-113. Shooting from or across highway.**—No person shall shoot any firearm from or across the roadway of any state or federal highway, or county road.

**History:** En. Sec. 110, Ch. 263, L. 1955; amd. Sec. 1, Ch. 25, L. 1974.

#### Amendments

The 1974 amendment added "or county road" at the end of the section.

### 32-21-114. Scope and effect of regulations.

#### Military Personnel

Noncommissioned officer acting under direct order to engage in emergency snow removal project related to threatened flood and who was operating a tilt deck trailer

upon a public highway without proper lights was immune from prosecution under this section. *State of Montana, County of Fergus, Township of Lewistown v. Christopher*, 345 F Supp 60.

### 32-21-118. Tail lamps.

#### County Road Grader

Statute requiring that tail lamps be not more than 72 inches from ground did not apply to county road grader on which two red tail lamps had been mounted ten feet from ground; motorist suing county for

injury sustained when auto struck road grader from rear was not entitled to instruction that statute had been violated and that county was therefore negligent as matter of law. *Bernhard v. Lincoln County*, 150 M 557, 437 P 2d 377.

**32-21-122. Additional equipment required on certain vehicles.** In addition to other equipment required in this act the following vehicles shall be equipped as herein stated under the conditions stated in section 32-21-121.

(a) to (e) \* \* \* [Same as parent volume.]

(f) On every trailer, semitrailer, or pole trailer weighing three thousand (3,000) pounds gross or less:

On the front, a steel chain or cable which shall be securely fastened to the towing unit with the minimum diameter of any portion of such chains or cables being one-fourth ( $\frac{1}{4}$ ) of one inch.

On the rear, two (2) reflectors, one (1) on each side. If any trailer or semitrailer is so loaded or is of such dimensions as to obscure the stop



light on the towing vehicle, then such vehicle shall also be equipped with one (1) stop light.

(g) and (h) \* \* \* [Same as parent volume.]

History: En. Sec. 119, Ch. 263, L. 1955;  
amd. Sec. 1, Ch. 233, L. 1959; amd. Sec.  
1, Ch. 182, L. 1974.

#### Amendments

The 1974 amendment inserted the second paragraph in subdivision (f) relating to steel chains or cables on the front of trailers.

**32-21-130. Lamps on other vehicles and equipment—emblem to be used on certain slow-moving vehicles—slow-moving vehicles to permit overtaking vehicles to pass.** (a) Every vehicle, including animal-drawn vehicles and vehicles referred to in section 32-21-114 (c), not specifically required by the provisions of sections 32-21-114 to 32-21-153 to be equipped with lamps or other lighting devices, shall at all times specified in section 32-21-115 be equipped with at least one (1) lamp displaying a white light visible from a distance of not less than five hundred (500) feet to the front of said vehicle, and shall also be equipped with two (2) lamps displaying red light visible from a distance of not less than five hundred (500) feet to the rear of said vehicle, or as an alternative, one (1) lamp displaying a red light visible from a distance of not less than five hundred (500) feet to the rear and two (2) red reflectors visible for distances of one hundred (100) to six hundred (600) feet to the rear when illuminated by the upper beams of head lamps.

(b) It shall be unlawful, after January 1, 1970, for any person to operate on the roadway of any state highway, farm, rural or county roads and city streets of this state any slow-moving vehicle or equipment, any animal-drawn vehicle, or any other machinery designed for use at speeds less than twenty-five (25) miles per hour, including all road construction or maintenance machinery, except when engaged in actual construction or maintenance work either guarded by a flagman or clearly visible warning signs, which normally travels or is normally used at a speed of less than twenty-five (25) miles per hour unless there is displayed on the rear thereof an emblem as described in and displayed as provided in subsection (c) of this section. The requirement of such emblem shall be in addition to any lighting devices required by law.

(c) The emblem required by subsection (b) of this section shall be of substantial construction, and shall be a based-down equilateral triangle of fluorescent yellow-orange film or equivalent quality paint with a base of fourteen (14) inches and an altitude of twelve (12) inches. Such triangle shall be bordered with reflective red strips having a minimum width of one and three-fourths ( $1\frac{3}{4}$ ) inches, with the vertices of the overall triangle truncated such that the remaining altitude shall be a minimum of fourteen (14) inches. Such emblem shall be mounted on the rear of such vehicle near the horizontal geometric center of the vehicle at a height of three (3) to five (5) feet above the roadway, and shall be maintained in a clean, reflective condition.

(d) Any person violating the provisions of this section shall be subject to penalty as provided for in section 32-21-157.

(e) In addition to the foregoing requirements, on a highway that has only two lanes for traffic moving in opposite directions, when an overtaking vehicle being operated in conformity with section 32-2144, R. C. M. 1947, does not have a clear lane for passing as required by section 32-2155 and section 32-2156, R. C. M. 1947, the driver of a slower-moving, overtaken vehicle shall, at the first opportunity, whenever sufficient area for a safe turnout exists, move the overtaken vehicle off the main-traveled portion of the highway until the overtaking vehicle is safely clear of the overtaken vehicle.

**History:** En. Sec. 127, Ch. 263, L. 1955;  
amd. Sec. 1, Ch. 247, L. 1969.

#### **Amendments**

The 1969 amendment added subsections (b) through (e); and designated the first paragraph as subsection (a).

**32-21-132. Audible and visual signals on vehicles.** (a) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this act, be equipped with a siren, exhaust whistle or bell capable of giving an audible signal.

(b) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this act, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front two (2) alternately flashing red lights located at the same level and to the rear two (2) alternately flashing red lights located at the same level, and these lights shall have sufficient intensity to be visible at five hundred (500) feet in normal sunlight.

(c) Every bus used for the transportation of school children shall, in addition to any other equipment and distinctive markings required by this act, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front two (2) red and two (2) amber alternating flashing lights and to the rear two (2) red and two (2) amber alternating flashing lights. These lights shall have sufficient intensity to be visible at five hundred (500) feet in normal sunlight. The warning lights shall be of a type, and located on each bus, as prescribed by the state board of education and approved by the supervisor of the highway patrol.

(d) A police vehicle when used as an authorized emergency vehicle may but need not be equipped with alternately flashing red lights specified herein. The use of the signal equipment described herein shall impose upon drivers of other vehicles the obligation to yield right of way and stop as prescribed in sections 32-2175 and 32-2197.

**History:** En. Sec. 129, Ch. 263, L. 1955; amd. Sec. 1, Ch. 40, L. 1959; amd. Sec. 1, Ch. 250, L. 1965.

#### **Amendment**

The 1965 amendment deleted "Every bus used for the transportation of school children and" at the beginning of subsection (b); inserted a new subsection (c); and redesignated former subsection (c) as (d).

#### **32-21-143. Repealed.**

##### **Repeal**

This section (Sec. 140, Ch. 263, L. 1955; Sec. 1, Ch. 81, L. 1957) relating to brakes

required on vehicles, was repealed by Sec. 5, Ch. 139, Laws 1965.

**32-21-143.1. Brake equipment required.** Every motor vehicle, trailer, semitrailer and pole trailer, and any combination of such vehicles operating upon a highway within this state shall be equipped with brakes in compliance with the requirements of this chapter.

(a) Service brakes—adequacy. Every such vehicle and combination of vehicles, except special mobile equipment as defined in sections 32-2102 (h) and 53-639, R. C. M., 1947, shall be equipped with service brakes complying with the performance requirements of section 2 [32-21-143.2] of this act and adequate to control the movement of and to stop and hold such vehicle under all conditions of loading, and on any grade incident to its operation.

(b) Parking brakes—adequacy. Every such vehicle and combination of vehicles, except motorcycles and motor-driven cycles, shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading, on a surface free from snow, ice or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brake drums, brake shoes and lining assemblies, brake shoe anchors and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that failure of any one part shall not leave the vehicle without operative brakes.

(c) Brakes on all wheels. Every vehicle shall be equipped with brakes acting on all wheels except:

1. Trailers, semitrailers, pole trailers of a gross weight not exceeding three thousand (3,000) pounds, provided that:

a. The total weight on and including the wheels of the trailer or trailers shall not exceed forty per cent (40%) of the gross weight of the towing vehicle when connected to the trailer or trailers, and

b. The combination of vehicles, consisting of the towing vehicle and its total towed load, is capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

2. Any vehicle being towed in driveaway or towaway operations, provided the combination of vehicles is capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

3. Trucks and truck-tractors having three (3) or more axles need not have brakes on the front wheels, except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes. However, such trucks and truck-tractors must be



capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

4. Special mobile equipment as defined in section 32-2102 (h) and 53-639, R. C. M., 1947.

5. The wheel of a sidecar attached to a motorcycle or to a motor-driven cycle, or the front wheel of a motor-driven cycle need not be equipped with brakes, provided that such motorcycle or motor-driven cycle is capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

(d) Automatic trailer brake application upon breakaway. Every trailer, semitrailer and pole trailer equipped with air or vacuum actuated brakes and every trailer, semitrailer and pole trailer with a gross weight in excess of three thousand (3,000) pounds, manufactured or assembled after January 1, 1966, shall be equipped with brakes acting on all wheels and of such character as to be applied automatically and promptly, and remain applied for at least fifteen (15) minutes, upon breakaway from the towing vehicle.

(e) Tractor brakes protected. Every motor vehicle manufactured or assembled after January 1, 1966, and used to tow a trailer, semitrailer or pole trailer equipped with brakes, shall be equipped with means for providing that in case of breakaway of the towed vehicle, the towing vehicle will be capable of being stopped by the use of its service brakes.

(f) Trailer air reservoirs safeguarded. Air brake systems installed on trailers manufactured or assembled after January 1, 1966, shall be so designed that the supply reservoir used to provide air for the brakes shall be safeguarded against backflow of air from the reservoir through the supply line.

(g) Two means of emergency brake operation. 1. Air brakes. After January 1, 1966, every towing vehicle, when used to tow another vehicle equipped with air controlled brakes, in other than driveaway or towaway operations, shall be equipped with two (2) means for emergency application of the trailer brakes. One of these means shall apply the brakes automatically in the event of a reduction of the towing vehicle air supply to a fixed pressure which shall be not lower than twenty (20) pounds per square inch nor higher than forty-five (45) pounds per square inch. The other means shall be a manually controlled device for applying and releasing the brakes, readily operable by a person seated in the driving seat, and its emergency position or method of operation shall be clearly indicated. In no instance may the manual means be so arranged as to permit its use to prevent operation of the automatic means. The automatic and the manual means required by this section may be, but are not required to be, separate.

2. Vacuum brakes. After January 1, 1966, every towing vehicle used to tow other vehicles equipped with vacuum brakes, in operations other than driveaway or towaway operations, shall have, in addition to the single control device required by subsection (h), a second control device which can be used to operate the brakes on towed vehicles in emergencies. The second control shall be independent of brake air, hydraulic, and other

pressure, and independent of other controls, unless the braking system be so arranged that failure of the pressure upon which the second control depends will cause the towed vehicle brakes to be applied automatically. The second control is not required to provide modulated braking.

(h) Single control to operate all brakes. After January 1, 1966, every motor vehicle, trailer, semitrailer and pole trailer, and every combination of such vehicles, except motorcycles and motor-driven cycles, equipped with brakes shall have the braking system so arranged that one control device can be used to operate all service brakes. This requirement does not prohibit vehicles from being equipped with an additional control device to be used to operate brakes on the towed vehicles. This regulation does not apply to driveaway or towaway operations unless the brakes on the individual vehicles are designed to be operated by a single control on the towing vehicle.

(i) Reservoir capacity and check valve. 1. Air brakes. Every bus, truck or truck-tractor with air operated brakes shall be equipped with at least one reservoir sufficient to insure that, when fully charged to the maximum pressure as regulated by the air compressor governor cut-out setting, a full service brake application may be made without lowering such reservoir pressure by more than twenty per cent (20%). Each reservoir shall be provided with means for readily draining accumulated oil or water.

2. Vacuum brakes. After January 1, 1966, every truck with three (3) or more axles equipped with vacuum assistor type brakes and every truck-tractor and truck used for towing a vehicle equipped with vacuum brakes shall be equipped with a reserve capacity or a vacuum reservoir sufficient to insure that, with the reserve capacity or reservoir fully charged and with the engine stopped, a full service brake application may be made without depleting the vacuum supply by more than forty per cent (40%).

3. Reservoir safeguarded. All motor vehicles, trailers, semitrailers and pole trailers, when equipped with air or vacuum reservoirs or reserve capacity as required by this section, shall have such reservoirs or reserve capacity so safeguarded by a check valve or equivalent device that in the event of failure or leakage in its connection to the source of compressed air or vacuum, the stored air or vacuum shall not be depleted by the leak or failure.

(j) Warning devices. 1. Air brakes. Every bus, truck or truck-tractor using compressed air for the operation of its own brakes or the brakes on any towed vehicle, shall be provided with a warning signal, other than a pressure gauge, readily audible or visible to the driver, which will operate at any time the air reservoir pressure of the vehicle is below fifty per cent (50%) of the air compressor governor cut-out pressure. In addition, each such vehicle shall be equipped with a pressure gauge visible to the driver, which indicates in pounds per square inch the pressure available for braking.

2. Vacuum brakes. After January 1, 1966, every truck-tractor and truck used for towing a vehicle equipped with vacuum operated brakes

and every truck with three (3) or more axles using vacuum in the operation of its brakes, except those in driveaway or towaway operations, shall be equipped with a warning signal, other than a gauge indicating vacuum, readily audible or visible to the driver, which will operate at any time the vacuum in the vehicle's supply reservoir or reserve capacity is less than eight (8) inches of mercury.

3. Combination of warning devices. When a vehicle required to be equipped with a warning device is equipped with both air and vacuum power for the operation of its own brakes or the brakes on a towed vehicle, the warning devices may be, but are not required to be, combined into a single device which will serve both purposes. A gauge or gauges indicating pressure or vacuum shall not be deemed to be an adequate means of satisfying this requirement.

**History:** En. Sec. 1, Ch. 139, L. 1965.

#### Compiler's Notes

Section 53-639, referred to in subdivisions (a) and (c) 4 of this section, was repealed by Sec. 12-109, Ch. 197, L. 1965.

#### Title of Act

An act to establish uniform and modern regulations relating to brakes on vehicles; requiring brakes on all vehicles and spe-

cifying exceptions thereto; requiring vehicles to be equipped with both service and parking brakes; establishing performance ability of brakes; defining hydraulic brake fluid; authorizing patrol board to adopt brake fluid standards and specifications; prohibiting the sale of brake fluid which does not meet specifications; repealing section 32-21-143, R. C. M., 1947, and all acts or parts of acts in conflict herewith.

### DECISIONS UNDER FORMER LAW

#### Double Jeopardy

Conviction under former section 32-21-143 did not bar prosecution for involuntary manslaughter arising out of the same

accident in subsequent action, because proof of the latter requires proof of an additional fact. *State v. McDonald*, 158 M 307, 491 P 2d 711.

**32-21-143.2. Performance ability of brakes.** Every motor vehicle and combination of vehicles, at all times and under all conditions of loading, upon application of the service brake, shall be capable of:

(a) Developing a braking force that is not less than the percentage of its gross weight tabulated herein for its classification,

(b) Decelerating to a stop from not more than twenty (20) miles per hour at not less than the feet per second per second tabulated herein for its classification, and

(c) Stopping from a speed of twenty (20) miles per hour in not more than the distance tabulated herein for its classification, such distance to be measured from the point at which movement of the service brake pedal or control begins.

Tests for deceleration and stopping distance shall be made on a substantially level (not to exceed plus or minus one per cent (1%) grade), dry, smooth, hard surface that is free from loose material.



Classification of Vehicles		Braking force as a percentage of gross vehicle or combina- tion weight	Deceleration in feet per second per second	Brake system appli- cation and braking distance in feet from an initial speed of twenty (20) miles per hour
A	Passenger vehicles with a seating capacity of ten (10) people or less including driver, not having a manufacturer's gross vehicle weight rating-----	52.8%	17	25
B-1	All motorcycles and motor-driven cycles	43.5%	14	30
B-2	Single unit vehicles with a manufacturer's gross vehicle weight rating of ten thousand (10,000) pounds or less-----	43.5%	14	30
C-1	Single unit vehicles with a manufacturer's gross weight rating of more than ten thousand (10,000) pounds --	43.5%	14	40
C-2	Combination of a two-axle towing vehicle and a trailer with a gross trailer weight of three thousand (3,000) pounds or less	43.5%	14	40
C-3	Buses, regardless of the number of axles, not having a manufacturer's gross weight rating -----	43.5%	14	40
C-4	All combinations of vehicles in driveaway-towaway operations -----	43.5%	14	40
D	All other vehicles and combinations of vehicles -----	43.5%	14	50

History: En. Sec. 2, Ch. 139, L. 1965.

**32-21-143.3. Maintenance of brakes.** All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle.

History: En. Sec. 3, Ch. 139, L. 1965.

**32-21-143.4. Hydraulic brake fluid.** (a) The term "hydraulic brake fluid" as used in this section shall mean the liquid medium through which force is transmitted to the brakes in the hydraulic brake system of a vehicle.

(b) Hydraulic brake fluid shall be distributed and serviced with due regard for the safety of the occupants of the vehicle and the public.

(c) The Montana highway patrol board shall, after public hearing following due notice, adopt and enforce regulations for the administration of this section and shall adopt and publish standards and specifications for hydraulic brake fluid which shall correlate with, and so far as practicable conform to, the then current standards and specifications of the society of automotive engineers applicable to such fluid.

(d) No person shall distribute, have for sale, offer for sale, or sell any hydraulic brake fluid unless it complies with the requirements of this

section. No person shall service any vehicle with brake fluid unless it complies with the requirements of this section.

**History:** En. Sec. 4, Ch. 139, L. 1965.

**Repealing Clause**

Section 5 of Ch. 139, Laws 1965 read

"Repealing section 32-21-143, R. C. M. 1947, and all acts or parts of acts in conflict herewith."

**32-21-144. Brakes on motor-driven cycles.**

**Compiler's Notes**

Section 32-21-143, referred to in sub-

section (a) in the parent volume, was repealed by Sec. 5, Ch. 139, Laws 1965.

**32-21-149. Restrictions as to tire equipment.** (a) A solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one (1) inch thick above the edge of the flange of the entire periphery.

(b) A person may not operate or move on a highway a motor vehicle, trailer, or semitrailer having a metal tire in contact with the roadway.

(c) A tire on a vehicle moved on a highway may not have on its periphery a block, stud, flange, cleat, or spike or other protuberance of a material other than rubber which projects beyond the tread of the traction surface of the tire, except that it is permissible to use farm machinery with tires having protuberances which will not injure the highway. It is also permissible to use tire chains of reasonable proportions or pneumatic tires, the traction surfaces of which have been embedded with material such as wood, wire, plastic or metal, which may not protrude more than one-sixteenth (1/16) of an inch beyond the tire tread, upon a vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid. The use of pneumatic tires embedded as provided in this section is permitted only between the first day of October and the last day of May of each year, except that one (1) of those tires may be used for a spare in case of tire failure. School buses equipped with such embedded pneumatic tires may operate from August 15 through the following June 15.

(d) The department of highways and local authorities in their respective jurisdictions may in their discretion issue special permits authorizing the operation upon a highway of farm tractors or other farm machinery, or of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of the movable tracks, the operation of which upon the highway would otherwise be prohibited under this act.

(e) A person violating this section is guilty of a misdemeanor.

**History:** En. Sec. 146, Ch. 263, L. 1955; amd. Sec. 1, Ch. 92, L. 1967; amd. Sec. 1, Ch. 194, L. 1971; amd. Sec. 1, Ch. 192, L. 1973; amd. Sec. 67, Ch. 316, L. 1974.

**Amendments**

The 1967 amendment inserted "the" before "roadway" in subsection (b); and inserted "or pneumatic tires, the traction surfaces of which have been embedded with material such as wood, wire, plastic or metal" after "proportions" in subsection (c).

The 1971 amendment inserted "which

shall in no instance protrude more than one-sixteenth (1/16) of an inch beyond the tire tread" near the end of the first sentence of subsection (c); added the second sentence to subsection (c); and added subsection (e).

The 1973 amendment added the last sentence to subsection (c).

The 1974 amendment substituted "department of highways" for "commission" in subsection (d); substituted "this section" for "this act" in subsection (e); and made minor changes in phraseology and punctuation.

**32-21-149.1. Fenders, splash aprons or flaps required on certain vehicles—dimension and location—violation a misdemeanor—penalty.** (a) It shall be unlawful for any person to move, or permit to be moved, any truck, bus, truck-tractor, trailer or semitrailer, as defined in sections 32-2102 to 32-2105, R. C. M. 1947, inclusive, upon the public highways without having first equipped the rearmost wheels or set of wheels of such vehicle with fenders, splash aprons or flaps. Such fenders, splash aprons or flaps shall be designed, constructed and attached to the vehicle in such manner so as to arrest and deflect dirt, mud, water, rocks and other substances which may be picked up by the rear wheels of such vehicle and thrown into the air, as follows:

(1) If the vehicle is equipped with fenders the same shall extend in full width from a point above and forward of the center of the tire or tires over and to the rear thereof.

(2) If the vehicle is equipped with splash aprons or flaps the same shall extend downward in full width from a point not lower than half-way between the center of the tire or tires and the top of said tire or tires and to the rear thereof.

(3) If the vehicle is in excess of eight thousand (8,000) pounds gross vehicle weight, such fenders, splash aprons or flaps shall extend downward to a point that is not more than ten (10) inches above the surface of the highway when the vehicle is empty.

(4) If the vehicle is eight thousand (8,000) pounds, or less, gross vehicle weight, such fenders, splash aprons or flaps shall extend downward to a point that is not more than twenty (20) inches above the surface of the highway when the vehicle is empty.

(b) Fenders, splash aprons or flaps, as used in paragraph (a) of this section shall be deemed to be of sufficient size and construction as to comply with the requirements thereof, if constructed as follows:

(1) When measured on the cross-sections of the tread of the wheel or on the combined cross-sections of the treads of multiple wheels, such fender, splash apron or flap extends at least to each side of the width of the tire or of the combined width of the multiple tires, as the case may be; and

(2) Such fender, splash apron or flap is so constructed as to be capable at all times of arresting and deflecting such dirt, mud, water, or other substance as may be picked up and carried by such wheel or wheels.

(c) Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars (\$10) nor more than twenty-five dollars (\$25), or by imprisonment in the county jail for a period of not more than thirty (30) days, or by both such fine and imprisonment.

**History:** En. Sec. 1, Ch. 286, L. 1969.

**Title of Act**

An act to require fenders or covers on certain wheels of specified types of motor

vehicles; defining the dimensions and locations of such fenders or covers; and providing penalties for any violation of this act.



**32-21-150.1. Seat belts required in new vehicles.** It is unlawful for any person to buy, sell, lease, trade or transfer from or to Montana residents at retail an automobile, which is manufactured or assembled commencing with the 1966 models, unless such vehicle is equipped with safety belts installed for use in the left front and right front seats thereof, and no such vehicle shall be operated in this state unless such belts remain installed.

**History:** En. Sec. 1, Ch. 115, L. 1965.

**Title of Act**

An act requiring that seat belts be installed in all automobiles manufactured or assembled commencing with the 1966

models; directing the highway patrol supervisor to establish specifications and requirements for approved types of safety belts and attachments; and providing a penalty.

**32-21-150.2. Specifications for seat belts.** All such safety belts must be of a type and must be installed in a manner approved by the highway patrol supervisor. The highway patrol supervisor shall establish specifications and requirements for approved types of safety belts and attachments thereto. The highway patrol supervisor will accept, as approved, all seat belt installations and the belt and anchor meeting the society of automotive engineers' specifications.

**History:** En. Sec. 2, Ch. 115, L. 1965.

**32-21-150.3. Penalty for seat belt violations.** Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be fined not to exceed one hundred dollars (\$100.00).

**History:** En. Sec. 3, Ch. 115, L. 1965.

**32-21-155.1. Semiannual inspection of school buses.** (1) The Montana highway patrol shall perform the semiannual inspection of school buses one of which shall be at least thirty (30) days prior to the beginning of the school term and reinspect the buses, if necessary, before the beginning of the school term.

(2) The Montana highway patrol's inspection shall determine if the school buses meet the minimum standards for school buses as adopted by the board of public education.

**History:** En. 32-21-155.1 by Sec. 2, Ch. 179, L. 1969; amd. Sec. 1, Ch. 141, L. 1973.

in subsection (1); and substituted the reference to the board of public education for a reference to the state board of education at the end of subsection (2).

**Amendments**

The 1973 amendment substituted "semi-annual inspection" for "annual inspection" in subsection (1); inserted "one of which shall be" before "at least thirty (30) days"

**Cross-References**

Reimbursement to schools for transportation of pupils, sec. 75-7018.

**32-21-161. Commercial tow car requirements.**

**Application Limited**

Where logging truck was struck from behind while engaged in removing disabled automobile from ditch, contention that logging truck violated this section by not being equipped with appropriate warn-

ing and safety devices was without merit since this section applies to tow cars and not vehicles such as logging truck herein involved. State ex rel. Eacker v. District Court, 154 M 36, 459 P 2d 686.

**32-21-163. Unlawful operation by child under eighteen—concurrent original jurisdiction of district court and justice court—penalties—impounding of vehicle, when.** The district courts and the justice courts of the state of Montana and the municipal and police courts of cities and towns shall have concurrent original jurisdiction in all proceedings concerning the unlawful operation of motor vehicles by children under the age of eighteen (18) years. Whenever, after a hearing before the court, it shall be found that a child under the age of eighteen (18) years has unlawfully operated a motor vehicle, the court may (a) impose a fine, not exceeding fifty dollars (\$50), provided such child shall not be imprisoned for failure to pay such fine, (b) may revoke the driver's license of such child, or suspend the same for such time as may be fixed by the court, and (c) may order any motor vehicle owned or operated by such child to be impounded by the probation officer for such time, not exceeding sixty (60) days, as shall be fixed by the court; provided, however, that if the court shall find that the operation of such motor vehicle was without the consent of the owner, then such vehicle shall not be impounded. Upon nonpayment of any fine herein provided for, the court may order that any motor vehicle owned by said child or operated by said child with the consent of the owner shall be impounded until the fine shall be paid, or may order that the driver's license of such child shall be taken up and held by the probation officer until payment of said fine, or may cause both said motor vehicle and said driver's license to be taken up and impounded until such fine shall be paid; but no child shall be committed to or held in any detention facility or jail by reason of nonpayment of such fine.

**History:** En. Sec. 1, Ch. 215, L. 1959; amd. Sec. 1, Ch. 188, L. 1963.

#### **Amendment**

The 1963 amendment inserted "and the justice courts" and "and the municipal and police courts of cities and towns" in

the first sentence; substituted "concurrent original jurisdiction" for "exclusive original jurisdiction" in the first sentence; and added to clause (a) of the second sentence the words "provided such child shall not be imprisoned for failure to pay such fine."

**32-21-164. Summons—issuing to child under eighteen.** Whenever any child under the age of eighteen (18) years shall unlawfully operate a motor vehicle in the presence of any peace officer of any county, city or town, or in the presence of any state highway patrolman, such officer may deliver to said child a form of summons describing the nature of the offense, with instructions thereon to report to the district court or a justice court of the county or the municipal or police court of the city or town wherein the offense occurs; and the court shall be informed thereof by the delivery of a copy of said summons to the probation officer, who shall in turn deliver the same to the judge or justice of the peace.

**History:** En. Sec. 2, Ch. 215, L. 1959; amd. Sec. 2, Ch. 188, L. 1963.

#### **Amendment**

The 1963 amendment inserted "or a

justice court" and "or the municipal or police court of the city or town"; and substituted "judge or justice of the peace" for "district judge" at the end of the section.

**32-21-166. Vehicle equipment safety compact—text.** This act shall be known and may be cited as the "Vehicle Equipment Safety Compact."

## ARTICLE I—FINDINGS AND PURPOSES

(a) The party states find that: (1) Accidents and deaths on their streets and highways present a very serious human and economic problem with a major deleterious effect on the public welfare.

(2) There is a vital need for the development of greater interjurisdictional co-operation to achieve the necessary uniformity in the laws, rules, regulations and codes relating to vehicle equipment, and to accomplish this by such means as will minimize the time between the development of demonstrably and scientifically sound safety features and their incorporation into vehicles.

(b) The purposes of this compact are to: (1) Promote uniformity in regulation of and standards for equipment.

(2) Secure uniformity of law and administrative practice in vehicular regulation and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety.

(3) To provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in subdivision (a) of this article.

(c) It is the intent of this compact to emphasize performance requirements and not to determine the specific detail of engineering in the manufacture of vehicles or equipment except to the extent necessary for the meeting of such performance requirements.

## ARTICLE II—DEFINITIONS

As used in this compact: (a) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(c) "Equipment" means any part of a vehicle or any accessory for use thereon which affects the safety of operation of such vehicle or the safety of the occupants.

## ARTICLE III—THE COMMISSION

(a) There is hereby created an agency of the party states to be known as the "Vehicle Equipment Safety Commission" hereinafter called the commission. The commission shall be composed of one commissioner from each party state who shall be appointed, serve and be subject to removal in accordance with the laws of the state which he represents. If authorized by the laws of his party state, a commissioner may provide for the discharge of his duties and the performance of his functions on the commission, either for the duration of his membership or for any lesser period of time, by an alternate. No such alternate shall be entitled to serve unless notification of his identity and appointment shall have been given to the commission in such form as the commission may require. Each commissioner, and each alternate, when serving in the place and stead of



a commissioner, shall be entitled to be reimbursed by the commission for expenses actually incurred in attending commission meetings or while engaged in the business of the commission.

(b) The commissioners shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, are present.

(c) The commission shall have a seal.

(d) The commission shall elect annually, from among its members, a chairman, a vice-chairman and a treasurer. The commission may appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the commission, and together with the treasurer shall be bonded in such amount as the commission shall determine. The executive director also shall serve as secretary. If there be no executive director, the commission shall elect a secretary in addition to the other officers provided by this subdivision.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director with the approval of the commission, or the commission if there be no executive director, shall appoint, remove or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

(f) The commission may establish and maintain independently or in conjunction with any one or more of the party states, a suitable retirement system for its full time employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The commission may borrow, accept or contract for the services of personnel from any party state, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party states or their subdivisions.

(h) The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency and may receive, utilize and dispose of the same.

(i) The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(j) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The com-

mission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states. The bylaws shall provide for appropriate notice to the commissioners of all commission meetings and hearings and the business to be transacted at such meetings or hearings. Such notice shall also be given to such agencies or officers of each party state as the laws of such party state may provide.

(k) The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been issued by the commission. The commission may make such additional reports as it may deem desirable.

#### ARTICLE IV—RESEARCH AND TESTING

The commission shall have power to: (a) Collect, correlate, analyze and evaluate information resulting or derivable from research and testing activities in equipment and related fields.

(b) Recommend and encourage the undertaking of research and testing in any aspect of equipment or related matters when, in its judgment, appropriate or sufficient research or testing has not been undertaken.

(c) Contract for such equipment research and testing as one or more governmental agencies may agree to have contracted for by the commission, provided that such governmental agency or agencies shall make available the funds necessary for such research and testing.

(d) Recommend to the party states changes in law or policy with emphasis on uniformity of laws and administrative rules, regulations or codes which would promote effective governmental action or co-ordination in the prevention of equipment-related highway accidents or the mitigation of equipment-related highway safety problems.

#### ARTICLE V—VEHICULAR EQUIPMENT

(a) In the interest of vehicular and public safety, the commission may study the need for or desirability of the establishment of or changes in performance requirements or restrictions for any item of equipment. As a result of such study, the commission may publish a report relating to any item or items of equipment, and the issuance of such a report shall be a condition precedent to any proceedings or other action provided or authorized by this article. No less than sixty (60) days after the publication of a report containing the results of such study, the commission upon due notice shall hold a hearing or hearings at such place or places as it may determine.

(b) Following the hearing or hearings provided for in subdivision (a) of this article, and with due regard for standards recommended by appropriate professional and technical associations and agencies, the commission may issue rules, regulations or codes embodying performance requirements or restrictions for any item or items of equipment covered in the report, which in the opinion of the commission will be fair and equitable and effectuate the purposes of this compact.

(c) Each party state obligates itself to give due consideration to any and all rules, regulations and codes issued by the commission and hereby declares its policy and intent to be the promotion of uniformity in the laws of the several party states relating to equipment.

(d) The commission shall send prompt notice of its action in issuing any rule, regulation or code pursuant to this article to the appropriate motor vehicle agency of each party state and such notice shall contain the complete text of the rule, regulation or code.

(e) If the constitution of a party state requires, or if its statutes provide, the approval of the legislature by appropriate resolution or act may be made a condition precedent to the taking effect in such party state of any rule, regulation or code. In such event, the commissioner of such party state shall submit any commission rule, regulation or code to the legislature as promptly as may be in lieu of administrative acceptance or rejection thereof by the party state.

(f) Except as otherwise specifically provided in or pursuant to subdivisions (e) and (g) of this article, the appropriate motor vehicle agency of a party state shall in accordance with its constitution or procedural laws adopt the rule, regulation or code within six (6) months of the sending of the notice, and, upon such adoption, the rule, regulation or code shall have the force and effect of law therein.

(g) The appropriate motor vehicle agency of a party state may decline to adopt a rule, regulation or code issued by the commission pursuant to this article if such agency specifically finds, after public hearing on due notice, that a variation from the commission's rule, regulation or code is necessary to the public safety, and incorporates in such finding the reasons upon which it is based. Any such finding shall be subject to review by such procedure for review of administrative determinations as may be applicable pursuant to the laws of the party state. Upon request, the commission shall be furnished with a copy of the transcript of any hearings held pursuant to this subdivision.

## ARTICLE VI—FINANCE

(a) The commission shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations under any such budget shall be apportioned among the party states as follows: one-third (1/3) in equal shares; and the remainder in proportion to the number of motor vehicles registered in each party state. In determining the number of such registrations, the commission may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall



indicate the source or sources used in obtaining information concerning vehicular registrations.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under Article III (h) of this compact, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under Article III (h) hereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its rules. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual reports of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

## ARTICLE VII—CONFLICT OF INTEREST

(a) The commission shall adopt rules and regulations with respect to conflict of interest for the commissioners of the party states, and their alternates, if any, and for the staff of the commission and contractors with the commission to the end that no member or employee or contractor shall have a pecuniary or other incompatible interest in the manufacture, sale or distribution of motor vehicles or vehicular equipment or in any facility or enterprise employed by the commission or on its behalf for testing, conduct of investigations or research. In addition to any penalty for violation of such rules and regulations as may be applicable under the laws of the violator's jurisdiction of residence, employment or business, any violation of a commission rule or regulation adopted pursuant to this article shall require the immediate discharge of any violating employee and the immediate vacating of membership, or relinquishing of status as a member on the commission by any commissioner or alternate. In the case of a contractor, any violation of any such rule or regulation shall make any contract of the violator with the commission subject to cancellation by the commission.

(b) Nothing contained in this article shall be deemed to prevent a contractor for the commission from using any facilities subject to his control in the performance of the contract even though such facilities are not devoted solely to work of or done on behalf of the commission; nor

to prevent such a contractor from receiving remuneration or profit from the use of such facilities.

## ARTICLE VIII—ADVISORY AND TECHNICAL COMMITTEES

The commission may establish such advisory and technical committees as it may deem necessary, membership on which may include private citizens and public officials, and may co-operate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities.

## ARTICLE IX—ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force when enacted into law by any six (6) or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one (1) year after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

## ARTICLE X—CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

**History:** En. Sec. 1, Ch. 109, L. 1965.

### Compiler's Notes

Nebraska, pursuant to Legislative Bill 923, has withdrawn from the Vehicle Equipment Safety Compact.

### Title of Act

An act to establish a stable and uniform basis for interstate co-operation to provide a means to speed up the development and adoption of uniform standards for new or improved automotive safety equipment and to be known as the Vehicle Equipment Safety Compact; setting forth the basic purposes of the compact; defining certain terms used in the act; establishing

a vehicle equipment safety commission and outlining the composition, duties and responsibilities of such commission; authorizing commission to establish salaries and retirement system for full-time employees; providing that commission will have an appointed commissioner from each party state with commission business expenses to be paid by compact commission; empowering commission to carry on "library type" research but prohibiting other type research and testing; authorizing commission to issue rules and regulations embodying performance requirements for items of equipment after conducting a needs study, publishing report of such study and holding hearings;

providing that party states are not obligated to adopt rules, regulations or codes of commission but must consider them; providing that official adoption of rules, regulations or codes of the commission shall require affirmative action by the legislature of the state of Montana before such rules, regulations or codes shall be effective in Montana; requiring commission to submit to the budget director of Montana the budget of the commission, the costs of which are to be apportioned among the member states on the basis that each member state contribute equal

moneys for one-third ( $\frac{1}{3}$ ) of the total commission budget and that the remainder of the budget be apportioned according to the number of motor vehicles registered in the party state; requiring that commission adopt rules and regulations to minimize conflicts of interest; authorizing commission to establish advisory and technical committees; providing for entry into and withdrawal from compact; providing for construction and severability of act; repealing all acts or parts of acts in conflict herewith.

**32-21-167. Legislative findings on equipment safety.** The legislature finds that: (1) The public safety necessitates the continuous development, modernization and implementation of standards and requirements of law relating to vehicle equipment, in accordance with expert knowledge and opinion.

(2) The public safety further requires that such standards and requirements be uniform from jurisdiction to jurisdiction, except to the extent that specific and compelling evidence supports variation.

(3) The Montana highway patrol board, acting upon recommendations of the vehicle equipment safety commission and pursuant to the Vehicle Equipment Safety Compact, provides a just, equitable and orderly means of promoting the public safety in the manner and within the scope contemplated by this act.

History: En. Sec. 2, Ch. 109, L. 1965.

**32-21-168. Equipment requirements continued in force.** (a) Provisions of sections 32-21-114 to 32-21-161, inclusive, R. C. M., 1947, shall continue to be of force and effect. The approval of the legislature of the state of Montana is a condition precedent to the taking effect of any rule, regulation or code that may be issued or adopted by the commission.

History: En. Sec. 3, Ch. 109, L. 1965.

**32-21-169. State commissioner on vehicle equipment safety commission.** The commissioner of this state on the vehicle equipment safety commission shall be the highway patrol supervisor who shall serve during his continuance as such officer. The commissioner of this state appointed pursuant to this section may designate an alternate from among the officers and employees of his agency to serve in his place and stead on the vehicle equipment safety commission. Subject to the provisions of the compact and bylaws of the vehicle equipment safety commission, the authority and responsibilities of such alternate shall be as determined by the commissioner designating such alternate.

History: En. Sec. 4, Ch. 109, L. 1965.

**32-21-170. Retirement of equipment safety commission employees.** The public employees retirement board of Montana may make an agreement with the vehicle equipment safety commission for the coverage of said commission's employees pursuant to Article III (f) of the compact.



Any such agreement, as nearly as may be, shall provide for arrangements similar to those available to the employees of this state and shall be subject to amendment or termination in accordance with its terms.

History: En. Sec. 5, Ch. 109, L. 1965.

**32-21-171. Governmental agencies to co-operate with equipment safety commission.** Within appropriations available therefor, the departments, agencies and officers of the government of this state may co-operate with and assist the vehicle equipment safety commission within the scope contemplated by Article III (h) of the compact. The departments, agencies and officers of the government of this state are authorized generally to co-operate with said commission.

History: En. Sec. 6, Ch. 109, L. 1965.

**32-21-172. Documents filed and notices given by equipment safety commission.** Filing of documents as required by Article III (j) of the compact shall be with the Montana highway patrol board. Any and all notices required by commission bylaws to be given pursuant to Article III (j) of the compact shall be given to the commissioner of this state and his alternate.

History: En. Sec. 7, Ch. 109, L. 1965.

**32-21-173. Equipment safety commission budgets.** Pursuant to Article VI (a) of the compact, the vehicle equipment safety commission shall submit its budgets to the state budget director.

History: En. Sec. 8, Ch. 109, L. 1965.

**32-21-174. Equipment safety commission accounts.** Pursuant to Article VI (e) of the compact, the state examiner is hereby empowered and authorized to inspect the accounts of the vehicle equipment safety commission.

History: En. Sec. 9, Ch. 109, L. 1965.

#### Cross-References

#### Repealing Clause

Section 10 of Ch. 109, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Examiner's functions transferred, sec. 82A-903(3)(o).

**32-21-175. Governor as executive head for compact purposes.** The term "executive head" as used in Article IX (b) of the compact shall, with reference to this state, mean the governor.

History: En. Sec. 11, Ch. 109, L. 1965.

**32-21-176. Grazing livestock on highway unlawful.** A person who owns or possesses livestock, may not permit the livestock to graze, remain upon or occupy a part of the right of way of a state highway running through cultivated areas, nor a part of the fenced right of way of a state highway, if in either case the highway has been designated by agreement between the highway commission and the secretary of transportation as a part of the national system of interstate and defense highways; nor a state

highway, designated by agreement between the highway commission and the secretary of transportation as a part of the federal-aid primary system except as provided in section 32-1019.

**History:** En. Sec. 1, Ch. 95, L. 1951; amd. Sec. 1, Ch. 186, L. 1961; Sec. 32-1018, R. C. M. 1947; amd. and redes. 32-21-176 by Sec. 7, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; substituted "highway commis-

sion" for "state highway commission"; substituted "secretary of transportation" for "secretary of commerce"; substituted "as provided in section 32-1019" for "as hereinafter provided" at the end of the section; and made minor changes in phraseology and punctuation.

**32-21-177. Exclusions from preceding section.** Section 32-1018 does not apply to the following:

(1) Livestock on state highways in charge of one (1) or more herders.

(2) The parts of fenced highways adjacent to open range where a highway device has not been installed to exclude range livestock.

(3) The parts of a state highway, a part of the federal-aid primary system, which the department of highways designates as being impracticable to exclude livestock. These portions of the highway shall be marked by proper signs in accordance with the department's manual and specifications for a uniform system of traffic-control devices.

**History:** En. Sec. 2, Ch. 95, L. 1951; amd. Sec. 2, Ch. 186, L. 1961; Sec. 32-1019, R. C. M. 1947; amd. and redes. 32-21-177 by Sec. 8, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment renumbered this

section; substituted "Section 32-1018" for "This act" in the first sentence; substituted references to "department of highways" for "state highway commission" in subdivision (3); and made minor changes in phraseology and punctuation.

**32-21-178. Penalty for violating act.** A person who violates section 32-21-176 is guilty of a misdemeanor and is subject to a fine of not less than five dollars (\$5), nor more than one hundred dollars (\$100), for each offense. In a civil action brought by the owner, driver or occupant of a motor vehicle, or by their personal representatives or assigns, or by the owner of livestock, for damages caused by collision between a motor vehicle and a domestic animal or animals on a highway, there is no presumption or inference that the collision was due to negligence on the part of the owner or the person in possession of the livestock, or the driver or owner of the vehicle.

**History:** En. Sec. 3, Ch. 95, L. 1951; amd. Sec. 3, Ch. 186, L. 1961; Sec. 32-1020, R. C. M. 1947; amd. and redes. 32-21-178 by Sec. 9, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; substituted "section 32-21-176" for "this act" in the first sentence; and made minor changes in phraseology and punctuation.

**32-21-179. Flagmen escorts—prohibitions against nighttime herding on public highways.** A person who owns, controls or possesses livestock may not herd or drive a herd of livestock numbering more than ten (10) on an interstate or state primary highway designated as such by the highway commission unless the livestock are preceded and followed by flagmen escorts for the purpose of warning other highway users. Live-

stock may not be herded nor driven on an interstate or state primary highway during nighttime as that term is defined in section 90-406, except in a case of emergency. In the case of an emergency, during the nighttime the flagmen escorts shall use adequate warning lights such as, but not limited to, portable lamps, lanterns, or rotating beacons. This section does not apply during daytime at posted livestock crossings on highways.

**History:** En. Sec. 1, Ch. 90, L. 1967; Sec. 32-1021, R. C. M. 1947; amd. and redes. 32-21-179 by Sec. 10, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment renumbered this

section; substituted "highway commission" for "state highway commission" in the first sentence; inserted "In the case of an emergency" in the third sentence; and made minor changes in phraseology and punctuation.

**32-21-180. Violations.** A person who violates section 32-21-179 is guilty of a misdemeanor.

**History:** En. Sec. 2, Ch. 90, L. 1967; Sec. 32-1022, R. C. M. 1947; amd. and redes. 32-21-180 by Sec. 11, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; substituted "section 32-21-179" for "this act"; and made minor changes in phraseology.

## CHAPTER 22—HIGHWAY CODE—GENERAL PROVISIONS

- Section 32-2201. Legislative findings.  
32-2202. Legislative policy and intent.  
32-2203. General definitions.

**32-2201. Legislative findings.** The legislative assembly recognizes that safe and efficient highway transportation is of important interest to all of the people of the state and hereby determines and declares that:

(1) Inadequate highways, roads, and streets obstruct the free flow of traffic, increase costs of motor vehicle operation, endanger the health and safety of the citizens of the state, depreciate property values, and impede generally the economic progress of the state.

(2) The problems of establishing and maintaining adequate highways, roads, and streets, eliminating congestion, reducing accident frequency, providing parking facilities, and taking all necessary steps to insure safe and convenient transportation are urgent.

(3) Therefore, adequate and integrated systems of highways, roads, and streets are essential to the general welfare of the state of Montana.

(4) Providing adequate highway facilities is a proper public use and purpose, and that this act is necessary for the preservation of the public peace, health, and safety, for the promotion of the general welfare, and as a contribution to the national defense.

**History:** En. Sec. 1, Ch. 197, L. 1965.

#### Compiler's Note

This section and sec. 32-2202 were designated as Chapter 1 of the Highway Code, entitled "Legislative Intent."

#### Title of Act

An act to be known as the Montana

Highway Code, for the codification and general revision of the laws pertaining to highways, including planning, construction, and maintenance; amending sections 16-1004, 16-2008, 16-2010, 16-2011, 16-3302, 53-122, 84-1831, 94-3202, and 94-3565, R. C. M. 1947, and repealing sections 16-1004.1, 16-1118, 16-1127, 16-1128, 16-2009, 16-2201 through 16-2204, 16-3311, 16-3312,



32-102 through 32-107, 32-201 through 32-208, 32-302 through 32-314, 32-316, 32-401 through 32-413, 32-415, 32-416, 32-501 through 32-507, 32-509 through 32-526, 32-601, 32-602, 32-701 through 32-711, 32-713 through 32-715, 32-901 through 32-905, 32-1002 through 32-1010, 32-1012 through 32-1014, 32-1016, 32-1301, 32-1601 through 32-1610, 32-1613 through 32-1618, 32-1620,

32-1622 through 32-1626, 32-1801 through 32-1804, 32-1901 through 32-1915, 32-2001 through 32-2010, 53-615 through 53-619, 53-621 through 53-623, 53-628 through 53-631, 53-634 through 53-639, 53-643, 84-1812 (1), 84-1812 (2), 84-1815, 84-1817, 89-821, 89-822, and 94-3201, R. C. M. 1947; providing for a savings clause and providing for the effective date of this act.

**32-2202. Legislative policy and intent.** Consistent with the foregoing determinations and declarations the legislative assembly intends:

(1) To place a high degree of trust in the hands of those officials whose duty it is, within the limits of available funds, to plan, develop, operate, maintain and protect the highway facilities of this state for present as well as for future use.

(2) To make the department of highways custodian of the federal-aid and state highways, and to impose similar responsibilities upon the boards of county commissioners with respect to county roads and upon municipal officials with respect to the streets under their jurisdiction.

(3) That the state shall have integrated systems of highways, roads, and streets, and that the department of highways, the counties and municipalities assist and co-operate with each other to that end.

(4) To provide sufficiently broad authority to enable the highway officials at all levels of government to function adequately and efficiently in all areas of their respective responsibilities, subject to the limitations of the constitution and the legislative mandate hereinafter imposed.

**History:** En. Sec. 2, Ch. 197, L. 1965; amd. Sec. 68, Ch. 316, L. 1974.

partment of highways" for "state highway commission" in subdivisions (2) and (3); and made minor changes in phraseology.

#### **Amendments**

The 1974 amendment substituted "de-

**32-2203. General definitions.** Subject to additional definitions contained in this title which are applicable to specific chapters or sections, and unless the context otherwise requires, terms are defined as follows:

(1) "Abandonment"—Cessation of use of right of way (easement) or activity thereon with no intention to reclaim or use again. (Sometimes called "vacation.")

(2) "Auditor"—County auditor.

(3) "Board"—Board of county commissioners.

(4) "Bridge"—Includes rights of way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills.

(5) "Clerk"—County clerk and recorder.

(6) "Commission"—Highway commission provided for in section 82A-706.1.

(7) "Committee"—Local improvement district committee of supervisors.

(8) "Condemnation"—Taking by exercise of the right of eminent domain.

(9) "Construction"—Supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, and mapping, costs of right of way or other interests in land and elimination of hazards at railway-grade crossings.

(10) "Control of access"—The condition in which the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public authority.

(11) "County road"—Any public highway opened, established, constructed, maintained, abandoned, or discontinued in accordance with chapters 31 and 40 of this title.

(12) "Department"—Department of highways provided for in Title 82A, chapter 7.

(13) "Director"—Director of highways, a position provided for in section 82A-701.

(14) "Easement"—A right acquired by public authority to use or control property for a designated purpose.

(15) "Eminent domain"—The right of the state to take private property for public use.

(16) "Federal-aid highway"—Any public highway which is a portion of any of the federal-aid highway systems.

(17) "Federal-aid highway systems"—All of the systems named hereafter and their urban extensions.

(18) "Federal-aid interstate system"—That system of public highway selected by the commission in co-operation with adjoining states, subject to the approval of the secretary of commerce as provided in the Federal Highway Act, as amended.

(19) "Federal-aid primary system"—That system of connected public highways designated by the commission subject to the approval of the secretary of commerce, as provided in the Federal Highway Act, as amended.

(20) "Federal-aid secondary system"—That system of public highways not on the federal-aid primary or interstate systems selected by the commission in co-operation with the boards of county commissioners, subject to the approval of the secretary of commerce, as provided in the Federal Highway Act, as amended.

(21) "Fee simple"—An absolute estate or ownership in property including unlimited power of alienation.

(22) "Highway"—Includes rights of way or other interests in land, embankments, retaining walls, culverts, sluices, drainage structures, bridges, railroad-highway crossings, tunnels, signs, guardrails, and protective structures.

(23) "Highway," "road," "street"—Whether they appear together or separately or are preceded by the adjective "public," these are general terms denoting a public way for purposes of vehicular travel, including the entire area within the right of way.

(24) "Highway authority (ies)"—The entity (ies) at any level of government authorized by law to construct and maintain highways.

(25) "Maintenance"—Preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for its safe and efficient utilization.

(26) "Public highways"—All streets, roads, highways, bridges, and related structures, which have been or shall be:

(a) Built and maintained with appropriated funds of the United States or the state or any political subdivision thereof.

(b) Dedicated to public use.

(c) Acquired by eminent domain.

(d) Acquired by adverse user by the public, jurisdiction having been assumed by the state or any political subdivision thereof.

(27) "Right of way"—A general term denoting land, property, or any interest therein, usually in a strip, acquired for or devoted to highway purposes.

(28) "State highway"—Any public highway planned, laid out, altered, constructed, reconstructed, improved, repaired, maintained, or abandoned by the department.

(29) "Superintendent"—County road superintendent.

(30) "Supervisor"—County road supervisor.

(31) "Surveyor"—County surveyor.

(32) "Toll bridge"—Any bridge constructed by the department, together with all appurtenances, additions, alterations, improvements, replacements, and the approaches thereto, lands used therefor, and improvements thereon.

(33) "Treasurer"—County treasurer.

**History:** En. Sec. 2-101, Ch. 197, L. 1965; amd. Sec. 69, Ch. 316, L. 1974.

#### Compiler's Note

This section was designated as Chapter 2 of the Highway Code, entitled "Definitions."

#### Amendments

The 1974 amendment substituted "contained in this title" in the first sentence for "contained in subsequent chapters of

this code"; deleted definitions of "Authority," and "Engineer"; substituted the present definition of "Commission" for "State highway commission"; substituted the present definition of "County road"; inserted definitions of "Department" and "Director"; substituted "department" for "commission" in subdivision (28) and for "Montana toll bridge authority" in subdivision (32); and made minor changes in phraseology and punctuation.

## CHAPTER 23—CLASSIFICATION OF HIGHWAYS

Section 32-2301. Classification—highways and roads.

32-2302. Lewis and Clark highway.

**32-2301. Classification—highways and roads.** (1) Public highways of this state are classed as follows:

(a) Federal-aid highways

(b) State highways

(c) County roads

(d) City streets.



(2) All highways which are not designated, selected, or established, by the commission constructed or maintained by the department are county roads or city streets.

(3) County roads are those opened, established, constructed, maintained, changed, abandoned, or discontinued, in accordance with chapters 31 and 40 of this title.

(4) City streets are those public highways under the jurisdiction of municipal officials.

History: En. Sec. 3-101, Ch. 197, L. 1965; amd. Sec. 70, Ch. 316, L. 1974.

#### Compiler's Note

This chapter was designated as Chapter 3 of the Highway Code, entitled "Classification of Highways."

#### Amendments

The 1974 amendment substituted "designated, selected, or established, by the commission constructed or maintained by the department" in subsection (2) for "designated, selected, established, constructed, or maintained by the commission"; and made minor changes in phraseology and punctuation.

**32-2302. Lewis and Clark highway.** There is hereby established the Lewis and Clark highway. It shall be composed of the following existing routes: (1) From the Idaho state line west of Lolo Hot Springs, Montana, to the junction with U. S. highway ninety-three (93) at Lolo.

(2) Thence north from Lolo on U. S. highway ninety-three (93) to Missoula.

(3) Thence east from Missoula on U. S. highway twelve (12) and ten (10) to Garrison.

(4) Thence east from Garrison on U. S. highway twelve (12) through Forsyth and Baker to the North Dakota state line.

History: En. Sec. 3-102, Ch. 197, L. 1965.

## CHAPTER 24—ASSENT TO FEDERAL AID—HIGHWAY COMMISSION —DEPARTMENT OF HIGHWAYS—POWERS AND DUTIES

- Section 32-2401. Assent to federal-aid acts.
- 32-2402. [Transferred.]
- 32-2404. Commission members—bond—meetings.
- 32-2406. General power of department.
- 32-2407. Commission to designate highways—rules of department.
- 32-2408. Designation of highways not located entirely within the state.
- 32-2409. Duties of commission and department—reports.
- 32-2410. Compilation of statistics—investigation—consultation.
- 32-2411. Agreements concerning effects of weight on highways.
- 32-2412. Seeding along highways.
- 32-2413. Description and plan of new highway or reconstructed or controlled access facility—recording.
- 32-2414. Relocation of utilities facilities—hearings—order.
- 32-2415. Relocation—costs.
- 32-2416. Relocation—definitions.
- 32-2419. Ports of entry and checking stations authorized.
- 32-2420. Checking stations required at major points of entry into state.
- 32-2421. Co-operation in use of ports of entry and checking stations.
- 32-2422. Purposes of act.
- 32-2423. Purposes for which federal funds to be expended.
- 32-2424. Extent of interest acquired.

**32-2425. Expenditure of funds.**

32-2425.1. Declaration of purpose.

32-2426. Department to fence along state highways through open range where livestock a hazard—gates—"open range" defined.

32-2427. Department to delineate open range hazard areas.

32-2428. Procedure for classifying state highways in open range.

32-2429. Department to fence where it has duty.

**32-2401. Assent to federal-aid acts.** (1) The legislative assembly, for and on behalf of the state of Montana, assents to the provisions of the Federal-Aid Road Act, approved July 1, 1916, and the Federal Highway Act, approved November 9, 1921, and all amendments thereto.

(2) The department may, for and on behalf of the state, enter into all contracts and agreements with the United States or any officer, department, or bureau thereof relating to the construction, reconstruction, repair, and maintenance of highways in the state.

(3) The department may make all rules necessary to comply with the provisions of the acts assented to, and all other acts granting aid for public highways, and to obtain for the state the full benefits of such acts.

(4) The department may do all other things necessary or required to carry out fully the co-operation contemplated by the acts of Congress assented to.

**History:** En. Sec. 4-101, Ch. 197, L. 1965; amd. Sec. 71, Ch. 316, L. 1974.

designated as Part 1 of Chapter 4, entitled "Assent to Federal Aid. State Highway Commission, Powers and Duties."

**Compiler's Note**

Chapters 24 to 27, inclusive, of this title (except secs. 32-2419 to 32-2421) were designated as Chapter 4 of the Highway Code, entitled "State Administration." Sections 32-2401 to 32-2418 herein were

**Amendments**

The 1974 amendment substituted "department" for "commission" throughout the section.

**32-2402. [Transferred.]****Compiler's Notes**

Section 72, Ch. 316, Laws of 1974 re-numbered this section as sec. 82A-706.1.

**32-2403. Repealed.****Repeal**

Section 32-2403 (Sec. 4-103, Ch. 197, L. 1965), relating to qualifications and ap-

pointments of members of the state highway commission, was repealed by Sec. 209, Ch. 316, Laws of 1974.

**32-2404. Commission members—bond—meetings.** (1) Each member of the highway commission shall give bond conditioned for the faithful performance of his duties in the sum of ten thousand dollars (\$10,000).

(2) The commission shall meet at least once each month for the purpose of transacting business.

**History:** En. Sec. 4-104, Ch. 197, L. 1965; amd. Sec. 73, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment inserted "of the highway commission" after "Each member" in subsection (1); and rewrote subsection (2) which read "Each member shall receive twenty dollars (\$20) per

diem for each day actually spent in the performance of his duties and his actual necessary traveling and other expenses in going to, attending, and returning from meetings of the commission. Each member shall also receive his actual and necessary traveling and other expenses incurred in the discharge of such duties as may be required of him by a majority vote of

the commission. In no event shall a member's per diem payments exceed two thousand dollars (\$2,000) in any one (1) year."

### 32-2405. Repealed.

#### Repeal

Section 32-2405 (Sec. 4-105, Ch. 197, L. 1965), relating to election of chairman

and meetings of the state highway commission, was repealed by Sec. 209, Ch. 316, Laws of 1974.

**32-2406. General power of department.** The department may plan, lay out, alter, construct, reconstruct, improve, repair, maintain, and the commission may abandon highways on the federal-aid systems and state highways. The department may co-operate and contract with counties and municipalities to provide assistance in performing these functions on other highways and streets.

**History:** En. Sec. 4-105, Ch. 197, L. 1965; amd. Sec. 74, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted references to "department" for references to "commission" throughout the section; and made minor changes in phraseology.

#### Cross-References

Commission functions transferred, sec. 82A-703.

#### Judicial Review

Where state highway commission con-

ducted investigations and held hearings to determine number of interchanges and their location with respect to new interstate highway and nearby town, and agreed that one interchange was sufficient, district court abused its discretion in issuing writ of mandamus ordering commission to construct two such interchanges since commission complied with this section and its decision cannot be disturbed unless clear abuse of discretion is shown. *Erie v. State ex rel. State Highway Commission*, 154 M 150, 461 P 2d 207, distinguished in 155 M 39, 47, 466 P 2d 594.

**32-2407. Commission to designate highways—rules of department.** (1) The commission shall designate such public highways in the state as shall be classed as the federal-aid primary system.

(2) The commission shall in co-operation with the board of county commissioners, select such public highways in the state as shall be classed as the federal-aid secondary system, taking into consideration the traffic count on those highways, the continuity of the highways in relation to the state highway systems as they may connect or tie into a unified system of federal-aid highways, and the taxable valuations which are affected by those public highways.

(3) The commission shall, in co-operation with adjoining states, select the routes of the federal-aid interstate system.

(4) The commission shall designate such public highways in the state as shall be classed as state highways, and the department shall adopt necessary rules for the construction, repair, maintenance, and marking of state highways and bridges.

**History:** En. Sec. 4-107, Ch. 197, L. 1965; amd. Sec. 1, Ch. 201, L. 1967; amd. Sec. 75, Ch. 316, L. 1974.

#### Amendments

The 1967 amendment added the passage beginning, "taking into consideration" after "secondary system" at the end of subsection (2).

The 1974 amendment inserted "department" before "shall adopt" in subsection

(4); and made minor changes in phraseology and punctuation.

#### Cross-References

Commission functions transferred, sec. 82A-703.

#### Commission Regulations as Evidence

In action for wrongful death of driver of state highway truck while sanding road in snowstorm, it was error to admit into



evidence Safety Manual adopted by highway commission and requiring that engineers, supervisors and foremen erect warning devices upon highway before

beginning work since requirement imposed no duty upon deceased driver to erect warning devices. *Williams v. Maley*, 150 M 261, 434 P 2d 398.

**32-2408. Designation of highways not located entirely within the state.** (1) The commission may designate highways subject to improvement under the provisions of the Federal-Aid Road Act, approved July 11, 1916, the Federal Highway Act, approved November 9, 1921, and all amendments thereto, even though those highways are not located entirely and continuously within the boundaries of the state. The designations shall meet the following conditions:

(a) That the highway is on an approved federal-aid route and eligible for improvement under the federal-aid acts.

(b) That the location of a portion of the route outside the boundaries of the state is necessary because of natural geographical or physical conditions which make the construction of the highway within the state impossible or impracticable.

(c) That the portion of the route located outside the state does not connect with and is not a part of the state highway system of the adjoining state.

(2) The department may expend funds for the construction, reconstruction, engineering, administration, betterment, and maintenance of these designated highways. It may do all things necessary or required to carry out fully the co-operation contemplated under the federal-aid acts with regard thereto.

**History:** En. Sec. 4-108, Ch. 197, L. 1965; amd. Sec. 76, Ch. 316, L. 1974.

partment" for "commission" in subsection (2); and made minor changes in phraseology.

#### Amendments

The 1974 amendment substituted "de-

**32-2409. Duties of commission and department—reports.** (1) The commission may adopt rules necessary for its government.

(2) The department shall:

(a) Maintain and preserve the records of the commission in its office at the capitol.

(b) File and preserve copies of all plans, specifications, contracts, estimates, and official acts taken by it or by the commission.

(c) Prepare and submit to the governor on or before the fifteenth day of each month a report of work constructed, under construction, and proposed for construction, the progress made during the preceding month, and recommendation for improvements and their estimated costs.

**History:** En. Sec. 4-109, Ch. 197, L. 1965; amd. Sec. 11, Ch. 93, L. 1969; amd. Sec. 77, Ch. 316, L. 1974.

#### Amendments

The 1969 amendment, in subsection (5), substituted the specified reporting requirement for provisions detailing a required biennial report to the governor and the legislative assembly.

The 1974 amendment inserted "The department shall" at the beginning of subsection (2); substituted "of the commission" for "its" in subdivision (2)(a); added "taken by it or by the commission" to subdivision (2)(b); deleted a final subdivision which read "Report as provided in section 2 [82-4002] of this act"; and made minor changes in phraseology, punctuation and style.

**32-2410. Compilation of statistics—investigation—consultation.** (1) The department shall compile statistics regarding public highways throughout the state and collect all related information deemed expedient.

(2) It shall investigate various methods of construction adapted to different sections of the state, and decide the best methods of construction and maintenance of highways, bridges, and road markers.

(3) The department may be consulted at all reasonable times by county officers having care and authority over highways and bridges and shall advise them on construction, repair, alteration, or maintenance.

(4) The department shall furnish such information and advice as may be requested by persons interested in the construction, maintenance, and marking of public highways. It shall at all times lend its aid in promoting highway improvement throughout the state.

**History:** En. Sec. 4-110, Ch. 197, L. 1965; amd. Sec. 78, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted “de-

partment” for “commission” in subsection (1), and for references to commission and the state highway engineer in subsections (3) and (4); and made minor changes in phraseology.

**32-2411. Agreements concerning effects of weight on highways.** (1) The department may contract with the United States or any state or group of states, or agencies thereof, or any nonprofit association, on a joint or co-operative basis, to study, analyze, or test the effects of weights on highways. Studies or tests shall seek solutions to the problems connected with the imposition of motor vehicle weights on highways.

(2) Studies or tests may be made either by designating existing highways or by constructing test strips, including natural resource roads.

**History:** En. Sec. 4-111, Ch. 197, L. 1965; amd. Sec. 79, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted “department” for “commission” in subsection (1).

**32-2412. Seeding along highways.** (1) After a federal-aid or state highway is constructed, the department shall seed borrow pits, slopes and shoulders to an adaptable perennial grass or combination of perennial grasses and legumes whenever establishment of perennial grass covers seem suitable. The seed shall be certified.

(2) The department shall seek joint recommendations and specifications as to time and method of seeding, fertilizing practices and grass species from the Montana extension service, the experiment station, and the soil conservation service.

(3) After a right of way in open range has been fenced pursuant to sections 32-2426 or 32-2427, the [department] may seed the land within the fence to a grass which may be cropped for hay, and may lease such lands or sell the right to take such hay to qualified persons.

**History:** En. Sec. 4-112, Ch. 197, L. 1965; amd. Sec. 6, Ch. 255, L. 1974; amd. Sec. 80, Ch. 316, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 255 and once by Ch. 316. Neither amendatory act mentioned

or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying changes made by both amendments.

The compiler substituted “department” for “commission” in subsection (3).

**Amendments**

Chapter 255, Laws of 1974, added subsection (3).

Chapter 316, Laws of 1974, substituted "department" for "commission" in subsections (1) and (2).

**32-2413. Description and plan of new highway or reconstructed or controlled access facility—recording.** (1) Whenever the department establishes the location, width, and lines of any new, reconstructed, or proposed highway, or the commission designates a road, street or highway as a controlled access facility, the department shall make a description and plan showing the center line and the established width, the immediate boundary lines of all private property over, across or through which the highway passes, the name or names of the owner of the property, the boundaries of that part of the private ownership included within the right of way of the highway, and the parcel number assigned to that part of each ownership included within the highway right of way, together with the project number under which the highway is or is proposed to be constructed or reconstructed.

(2) Reference to the project number, parcel number, and section, or quarter section, tract, block or lot from which the same has been subdivided is valid description of the parcel in all deeds given to or received from the state in which a parcel is transferred.

**History:** En. Sec. 4-113, Ch. 197, L. 1965; amd. Sec. 1, Ch. 131, L. 1969; amd. Sec. 81, Ch. 316, L. 1974.

**Amendments**

The 1969 amendment inserted reference to reconstructed highways in subsection (1) and added "the immediate boundary \* \* \* to be constructed or reconstructed" and rewrote subsection (2) which formerly called for recording of description and plan and copy of commission resolution in a special book to be furnished to county clerk and recorder by the commission.

The 1974 amendment substituted "department" for "commission" at the beginning of subsection (1); inserted "or the commission" before "designates" in subsection (1); substituted "the department" for "its" before "shall make a description" in subsection (1); and made minor changes in phraseology and punctuation.

**Effective Date**

Section 2 of Ch. 131, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

**32-2414. Relocation of utilities facilities — hearings — order.** (1) After appropriate hearings, the department may adopt reasonable regulations for the installation, construction, maintenance, repair, renewal, or relocation of tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances (hereafter called "facilities") of a utility in, on, along, over, across, through or under a project on any of the federal-aid systems.

(2) The department shall give written notice of the place and time of a public hearing to determine the necessity of a relocation of facilities to all concerned not less than twenty (20) days before the hearing. Hearing may be waived in writing by the utility concerned or other interested parties.

(3) After the hearing, the department may determine that the facilities must be relocated. If so, the utility owning or operating the facilities shall relocate them in accordance with the order of the department. The utility and its successors and assigns may maintain and operate the relocated facilities, with the necessary appurtenances, in the new location.



**History:** En. Sec. 4-114, Ch. 197, L. 1965; amd. Sec. 82, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "commission" throughout the section; and made minor changes in phraseology.

**32-2415. Relocation—costs.** Seventy-five per cent (75%) of all costs of relocation, including the costs of acquisition of new right of way, of dismantling, and of removal, shall be paid by the department as a cost of highway construction.

**History:** En. Sec. 4-115, Ch. 197, L. 1965; amd. Sec. 83, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "commission."

**32-2416. Relocation—definitions.** For the purposes of the sections relating to relocation of utilities facilities, terms are defined as follows: (1) Utility—Includes publicly, privately, and co-operatively owned utilities.

(2) Cost of relocation—Includes the entire amount paid by the utility properly attributable to the relocation after deducting any increase in the value of the new facility and any salvage value derived from the old facility.

(3) Federal-aid systems—Includes the federal-aid primary system, the federal-aid secondary system, the federal-aid interstate system, and urban extensions of all of them.

(4) Interstate system—Includes any highway now included or which shall hereafter be included as a part of the National System of Interstate and Defense Highways, provided for in the Federal-Aid Highway Act of 1956 and supplements or amendments.

**History:** En. Sec. 4-116, Ch. 197, L. 1965.

### 32-2417, 32-2418. Repealed.

#### Repeal

Sections 32-2417 and 32-2418 (Secs. 4-117, 4-118, Ch. 197, L. 1965), relating to certification and payment of claims, and

prosecution for violations under this act, were repealed by Sec. 209, Ch. 316, Laws of 1974.

**32-2419. Ports of entry and checking stations authorized.** To augment and help make more efficient and effective the enforcement of certain laws of the state, the department shall establish temporary or permanent ports of entry or checking stations upon highways in the state at places which the department considers necessary and advisable.

**History:** En. Sec. 1, Ch. 137, L. 1965; amd. Sec. 84, Ch. 316, L. 1974.

temporary and permanent ports of entry and checking stations.

#### Compiler's Note

Sections 32-2419 to 32-2421, inclusive, were not enacted as a part of the Highway Code. They did, however, become effective on the same date as the Highway Code, December 31, 1966.

#### Title of Act

An act authorizing and directing the state highway commission to establish

#### Amendments

The 1974 amendment substituted "department" for "state highway commission" in two places; and made minor changes in phraseology.

#### Cross-References

Highway commission functions transferred, sec. 82A-703.

**32-2420. Checking stations required at major points of entry into state.** In addition to the power granted to it in section 32-2419, the department shall establish checking stations at convenient points on the major highways entering this state, and the checking stations shall be kept open at all times.

**History:** En. Sec. 2, Ch. 137, L. 1965; amd. Sec. 85, Ch. 316, L. 1974.

partment" for "state highway commission"; and made minor changes in phraseology.

**Amendments**

The 1974 amendment substituted "de-

**32-2421. Co-operation in use of ports of entry and checking stations.** The department shall co-operate with other agencies and political subdivisions of this state in the use of the ports of entry or checking stations, so that maximum use can be made of the facilities in enforcement of the laws of this state.

**History:** En. Sec. 3, Ch. 137, L. 1965; amd. Sec. 86, Ch. 316, L. 1974.

**Budget**

Section 4, Ch. 137, Laws 1965, related to preparation of the budget for the 1967-1968 biennium and is omitted as temporary.

**Amendments**

The 1974 amendment substituted "department" for "state highway commission"; and made minor changes in phraseology.

**Effective Date**

Section 5 of Ch. 137, Laws 1965 read "This act is effective December 31, 1966."

**32-2422. Purposes of act.** The purpose of sections 32-2422 through 32-2425 is:

(1) To promote the safety, convenience and enjoyment of travel on, and protection of the public investment in the highways of this state.

(2) To restore, preserve and enhance scenic beauty within the right of way of and adjacent to the highways.

(3) To entitle the state to receive and expend the three per cent (3%) nonmatching funds from the United States under Title 23, United States Code.

**History:** En. Sec. 1, Ch. 286, L. 1967; amd. Sec. 87, Ch. 316, L. 1974.

enhancement of scenic beauty within and adjacent to federal-aid highways.

**Title of Act**

An act providing for the acquisition of land for the restoration, preservation and

**Amendments**

The 1974 amendment inserted the introductory sentence; and made minor changes in phraseology and style.

**32-2423. Purposes for which federal funds to be expended.** The department may expend funds apportioned to the state under Public Law 89-285, Title III, Section 301 (a), October 22, 1965, 79 Statute 1032, for the following purposes:

(a) For landscape and roadside development within the rights of way of federal-aid highways of this state;

(b) For acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to the highways; and

(c) For acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities within

or adjacent to federal-aid highway rights of way reasonably necessary to accommodate the traveling public.

**History:** En. Sec. 2, Ch. 286, L. 1967; amd. Sec. 88, Ch. 316, L. 1974.

partment" for "state highway commission" in the first paragraph; and made minor changes in phraseology.

#### Amendments

The 1974 amendment substituted "de-

**32-2424. Extent of interest acquired.** The department may acquire the fee simple or any lesser estate or interest as determined by it to be reasonably necessary to accomplish the purposes of section 32-2422 through 32-2425. Acquisition may be made by gift, purchase, or exchange.

**History:** En. Sec. 3, 286, L. 1967; amd. Sec. 89, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "commission"; and made minor changes in phraseology.

**32-2425. Expenditure of funds.** The department shall expend only nonmatching funds authorized under section 319 (b) of the Federal Highway Beautification Act of 1965, as amended, in carrying out the authority granted by sections 32-2422 through 32-2424.

**History:** En. Sec. 4, Ch. 286, L. 1967; amd. Sec. 90, Ch. 316, L. 1974.

#### Effective Date

Section 5 of Ch. 286, Laws 1967 read "This act shall be effective on and after July 1, 1967."

#### Amendments

The 1974 amendment substituted "department" for "commission"; and made minor changes in phraseology.

**32-2425.1. Declaration of purpose.** It is the purpose of this act to balance the tradition of the open range and the economic and geographic problems of raising livestock with the need for safer highways and the policy of taking all feasible measures to reduce the high incidence of traffic accidents and fatalities on Montana highways.

**History:** En. 32-2425.1 by Sec. 1, Ch. 255, L. 1974.

cording to the degree of traffic hazard created by livestock and to fence out livestock in the more hazardous areas; and amending sections 32-2426, 32-2427 and 32-2412, R. C. M. 1947.

#### Title of Act

An act directing the department of highways to classify open range areas ac-

**32-2426. Department to fence along state highways through open range where livestock a hazard—gates—"open range" defined.** (1) The department shall fence the right of way of any part of the state highway system that is constructed or reconstructed, after July 1, 1969, through open range where livestock present a hazard to the safety of the motorist. Where a fence is constructed, adequate stock gates or stock passes, as necessary, shall be provided to make land on either side of the highway usable for livestock purposes.

(2) For the purposes of this act, as used in sections 2 through 6 [32-2426 through 32-2429, 32-2412]:

(a) "Open range" means those areas of the state where livestock is raised and maintained in sufficient numbers as to constitute a significant



part of the local or county economy and where such animals graze and move about generally unrestrained by fences.

(b) A "high hazard area" is a segment of the primary highway system passing through open range where livestock moves on or across the highway often enough, in enough numbers, and with enough ease of access that such animals create a significant traffic safety hazard. Evidence bearing on whether animals on the highway pose a significant hazard includes, without limitation, past accident records, the opinions of persons qualified by experience to evaluate the relative safety of road conditions, and the terrain around the road.

(c) A "low hazard area" is a segment of the primary highway system passing through open range which is not a high hazard area.

(d) "Livestock" means cattle, sheep, swine, horses, mules, and goats.

**History:** En. Sec. 1, Ch. 311, L. 1969; there is a sufficient safety hazard from amd. Sec. 2, Ch. 255, L. 1974; amd. Sec. livestock to warrant fencing. 91, Ch. 316, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 255 and once by Ch. 316. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Title of Act

An act requiring the highway commission to fence highways that run through open range where livestock present a safety hazard to the motorist; defining open range for the purpose of this act; and authorizing the highway commission to determine where in open range areas

#### Amendments

Chapter 255, Laws of 1974, rewrote subsection (2) which read: "For the purpose of this act the term 'open range' means all private and public lands in the state of Montana not inclosed by a fence of not less than four (4) wires in good repair but does not include herd districts as created and defined by section 46-1501, R. C. M. 1947."

Chapter 316, Laws of 1974, substituted "Department" for "Commission" in the caption; substituted "department" for "highway commission" in subsection (1); substituted "July 1, 1969" for "the effective date of this act" in subsection (1); substituted "In section 32-2426 and 32-2427" for "For the purpose of this act" at the beginning of subsection (2); and made minor changes in phraseology and punctuation.

**32-2427. Department to delineate open range hazard areas.** The department shall, by December 31, 1975, delineate the open range areas through which the primary highway system runs and classify, pursuant to section 4 [32-2428], such areas as high hazard areas or low hazard areas.

**History:** En. Sec. 2, Ch. 311, L. 1969; amd. Sec. 3, Ch. 255, L. 1974; amd. Sec. 92, Ch. 316, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 255 and once by Ch. 316. The amendment by Ch. 255 incorporated the changes made by Ch. 316 and the text of the amendment by the former act is set out below.

#### Amendments

Chapter 255, Laws of 1974, rewrote this section which read: "The highway commission shall designate the open range areas where livestock present a sufficient safety hazard to the motorist to warrant fencing by the highway commission."

Chapter 316, Laws of 1974, substituted references to "department" in the caption and text of the section for references to "commission" and "highway commission."

**32-2428. Procedure for classifying state highways in open range.** The department shall study the primary highways in each county containing open range and, applying the criteria set out in section 32-2426, shall pro-

pose a division of such areas into high hazard and low hazard areas. The department shall publish an illustrated summary of its proposed classification of a county, in a newspaper of general daily or weekly circulation in that county, and the same publication shall give notice of a public hearing in the county within four (4) weeks. The department shall conduct this hearing on its proposed classification, and the record of the hearing shall include a statement of the department's reasons for its proposal as well as the views of the citizens interested in the proposal. Within four (4) weeks after the hearing, the department shall publish its final decision on the classification in the same format and newspaper used for the publication of the notice. For the purpose of judicial review, this final decision is a rule which may be reviewed by a district court as provided in section 82-4219.

**History:** En. 32-2428 by Sec. 4, Ch. 255, L. 1974.

**32-2429. Department to fence where it has duty.** The department shall erect a fence in every high hazard area as promptly as possible, and the cost of such construction is an expenditure for the enforcement of federal-aid highway safety programs. Gates, stock underpasses, water facilities, and cattle guards may be installed where necessary to make the land on either side of the highway usable for livestock purposes or where a public right of way intersects the state highway.

**History:** En. 32-2429 by Sec. 5, Ch. 255, L. 1974.

## CHAPTER 25—STATE HIGHWAYS ENGINEER AND OTHER EMPLOYEES

Section 32-2504. Board of highway appeals—hearings.

32-2505. Personnel grievances—hearings.

### 32-2501 to 32-2503. Repealed.

#### Repeal

Sections 32-2501 to 32-2503 (Secs. 4-201 to 4-203, Ch. 197, L. 1965; Sec. 1, Ch. 312, L. 1967), relating to appointment of a state highway administrator and other

employees, salaries of commission employees, and the establishment of the division of maintenance and control, were repealed by Sec. 209, Ch. 316, Laws of 1974.

**32-2504. Board of highway appeals—hearings.** The board of highway appeals, provided for in section 82A-704, shall hear grievances of personnel of the department of highways. An employee of the department who has a grievance and who has exhausted all other administrative remedies within the department, is entitled to a hearing before the board for a resolution of the grievance. A grievance of an employee means an employee's dissatisfaction concerning a serious matter of his employment based upon work conditions, supervision, or the result of an administrative action.

**History:** En. 32-2504 by Sec. 93, Ch. 316, L. 1974.

**32-2505. Personnel grievances—hearings.** The board of personnel appeals, provided for in section 82A-1014, shall hear grievances of personnel of the department of highways. An employee of the department who has a

grievance and who has exhausted all other administrative remedies within the department, is entitled to a hearing before the board of personnel appeals for a resolution of the grievance. A grievance of an employee means an employee's dissatisfaction concerning a serious matter of his employment based upon work conditions, supervision, or the result of an administrative action.

History: En. 32-2505 by Sec. 2, Ch. 28, L. 1974.

#### Repealing Clause

Section 3 of Ch. 28, Laws 1974 read "Sections 82A-704 and 82A-705, R. C. M. 1947, are repealed."

### CHAPTER 26—DISTRIBUTION AND APPORTIONMENT OF HIGHWAY CONSTRUCTION FUNDS

- Section 32-2601. Distribution and use of proceeds of gasoline dealers' license tax.  
 32-2603. Districts for apportionment of department funds.  
 32-2604. Construction or reconstruction of bridges.  
 32-2605. Apportionment of state construction funds.  
 32-2606. Apportionment of state funds to federal-aid primary highway system.  
 32-2607. Apportionment of state funds to federal-aid secondary highway system.  
 32-2608. Secondary highway information.  
 32-2609. Apportionment of state funds to federal-aid interstate highway system.  
 32-2610. Increases in expenditures.  
 32-2611. Apportionment of state funds to federal-aid urban highways.  
 32-2612. Interim apportionment to match federal-aid funds.  
 32-2613. Allocation for safety construction programs.  
 32-2614. Replacement of bridges.  
 32-2615. Definition.  
 32-2616. Selection of routes.  
 32-2617. Allocation of funds.  
 32-2618. Apportionment of funds.  
 32-2619. Excess expenditures.  
 32-2620. Economic growth center defined.  
 32-2621. Department of highways shall determine centers.  
 32-2622. Allocation of funds.  
 32-2623. Apportionment of funds.

**32-2601. Distribution and use of proceeds of gasoline dealers' license tax.** (1) All money received in payment of license taxes under the Distributor's Gasoline License Tax Act, except those amounts paid out of the department of revenue's suspense account for gasoline tax refund, shall be used and expended as provided in this section. So much of that money on hand at any time as may be needed to pay highway bonds and interest thereon when due and to accumulate and maintain a reserve therefor, as provided in laws and in resolutions of the state board of examiners authorizing such bonds, shall be deposited in the highway bond account in the sinking fund established by section 79-410. The legislative assembly hereby finds as a fact that the principal and interest and reserve requirements of bonds so authorized are a necessary cost of administering laws under which gasoline license taxes are derived, payment of highway obligations, and cost of construction, reconstruction, maintenance and repair of public highways, roads, streets, and bridges. Subject to that provision, six-tenths of one per cent (.6%) of all money shall be deposited in the state park account in the earmarked revenue fund. All of the re-



mainder of the money shall be used and expended by the department of highways on the federal-aid highways in this state selected and designated under the Federal-Aid Act, approved July 11, 1916, and the Federal Highway Act, approved November 9, 1921, and all amendments thereto, and on highways leading from each county seat in the state to the federal highway system of federal-aid roads where the county seat is not on the system, and on the other roads which have been or may be authorized by the laws of Montana, and for collection of the license taxes and the enforcement of the Montana highway code, under article VIII, section 6 of the constitution of this state. The department shall, in expending this money, carry forward construction from year to year, using the money expended through the matching up of federal-aid allotments to Montana upon the federal highway system in the various parts of the state in accordance with sections 32-2605 through 32-2607; nothing in this act conflicts with those federal-aid highway acts and the rules by which they are administered. The department may enter into co-operative agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.

(2) Money credited to the state park account in the earmarked revenue fund shall be used only for the creation, improvement, and maintenance of state parks where motorboating is allowed, except for the payment of refunds under section 84-1855. The legislative assembly hereby finds as a fact that of all the fuel sold in the state for consumption in internal combustion engines, not less than six-tenths of one per cent (.6%) is used for propelling boats on waterways of this state.

**History:** En. Sec. 4-301, Ch. 197, L. 1965; amd. Sec. 1, Ch. 251, L. 1967; amd. Sec. 6, Ch. 356, L. 1971; amd. Sec. 13, Ch. 100, L. 1973; amd. Sec. 94, Ch. 316, L. 1974.

#### Compiler's Notes

This chapter was designated as Part 3 of Chapter 4 of the Highway Code, entitled "Distribution and Apportionment of Highway Construction Funds."

Section 84-1818, referred to in the last paragraph, was repealed by Sec. 20, Ch. 369, Laws 1969.

#### Amendments

The 1967 amendment reduced the percentage deposited in the state park account and the percentage specified in the second sentence of the second paragraph from one per cent to six-tenths of one per cent; substituted "section 32-2605 through 32-2607" for "sections 4-308 through 4-310" in the third sentence (now the sixth sentence) of the first paragraph; and added "except for the payment of refunds as provided in section 84-1818, R. C. M. 1947" at the end of the first sentence of the second paragraph.

The 1971 amendment inserted new first, second and third sentences in the first paragraph; inserted "Subject to the foregoing provision" at the beginning of the

fourth sentence of the first paragraph; deleted "except that amount paid out of the state board of equalization's suspense account for gasoline tax refund" after "All other money received" at the beginning of the fifth sentence of the first paragraph; and made minor changes in phraseology and style.

The 1973 amendment deleted "pursuant to the provisions of article XII, section 1b of the constitution of the state of Montana" at the end of the third sentence in the first paragraph.

The 1974 amendment substituted "Distributor's Gasoline License Tax Act" in the first sentence of subsection (1) for "the provisions of sections 84-1845 to 84-1855"; substituted "department of revenue's suspense account" in the first sentence of subsection (1) for "state board of equalization's suspense account"; substituted references to "department of highways" for references to "state highway commission" throughout the section; substituted "under article VIII, section 6 of the constitution" near the middle of subsection (1) for "pursuant to the provisions of article XII, section 1b of the constitution"; substituted "federal highway administration" near the end of subsection (1) for "national park service and the bureau of public roads"; substituted "under section 84-1855" in subsection (2) for

"provided in section 84-1818, R. C. M. 1947"; and made minor changes in phraseology, punctuation and style.

#### Effective Date

Section 7 of Ch. 356, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

### 32-2602. Repealed.

#### Repeal

Section 32-2602 (Sec. 4-302, Ch. 197, L. 1965), relating to limitations on expenditures for administration, dissemination

of public information and engineering connected with highway construction, was repealed by Sec. 1, Ch. 251, Laws 1969, effective March 6, 1969.

**32-2603. Districts for apportionment of department funds.** All money available to the department for highway construction purposes shall be apportioned among these financial districts, each composed of the counties named:

District 1. Lincoln, Flathead, Lake.

District 2. Glacier, Toole, Liberty, Hill, Blaine.

District 3. Phillips, Valley, Daniels, Sheridan, Roosevelt.

District 4. McCone, Richland, Dawson, Prairie, Wibaux.

District 5. Fergus, Garfield, Petroleum.

District 6. Pondera, Teton, Chouteau, Cascade, Judith Basin.

District 7. Lewis and Clark, Jefferson, Broadwater.

District 8. Sanders, Mineral, Missoula, Ravalli, Granite, Powell.

District 9. Beaverhead, Deer Lodge, Silver Bow, Madison.

District 10. Park, Gallatin, Sweet Grass, Meagher, Wheatland.

District 11. Golden Valley, Musselshell, Stillwater, Yellowstone, Carbon, Big Horn, Treasure.

District 12. Rosebud, Custer, Fallon, Powder River, Carter.

**History:** En. Sec. 4-306, Ch. 197, L. 1965; amd. Sec. 95, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "commission" in the first sentence.

**32-2604. Construction or reconstruction of bridges.** (1) The department may allocate from state construction moneys available for the federal-aid highway system up to one million dollars (\$1,000,000) in any fiscal year for the construction or reconstruction of any major bridge or system of bridges on the primary or secondary highway systems. This may be done only when the use of regularly apportioned funds would prohibit or seriously delay the orderly and necessary highway construction program in the financial districts.

(2) When the department, as a part of its finding of public necessity, declares that a particular bridge should be constructed or reconstructed on a designated portion of the primary or secondary highway, the allocation may be made. The allocation may be expended:

(a) On primary bridges when the department's estimate of the cost of construction or reconstruction is in excess of five hundred thousand dollars (\$500,000).

(b) On secondary bridges when the department's estimate of the state's share of the cost of construction or reconstruction is in excess of the

total estimated future regular apportionment of state construction moneys to the federal-aid secondary system of the county or counties for a period of three (3) years.

(3) The allocation shall be made from available state construction moneys for the primary system before the apportionment in section 32-2606, and for the secondary system before the apportionment in section 32-2607.

**History:** En. Sec. 4-307, Ch. 197, L. 1965; amd. Sec. 96, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted ref-

erences to department for references to commission in subsections (1) and (2), and references to engineer in subdivisions (2)(a) and (2)(b); and made minor changes in phraseology.

**32-2605. Apportionment of state construction funds.** At the beginning of each fiscal year the department shall apportion available state construction funds to the various federal-aid highway systems which are required to match the amounts of federal aid available for expenditure on each respective system. The state's share of the cost of final judgments in court awards made to construction contractors on state highway construction projects during the previous fiscal year may be deducted from funds available prior to the apportionments provided in this section and this cost shall be credited to the accounts of the highway system, financial district, county or urban city involved as an offset to the charges made to the accounts as a result of the final judgment. The deductions may be made only when the amount of these judgments would prohibit or seriously impair the highway construction program in a financial district, county or urban city.

**History:** En. Sec. 4-308, Ch. 197, L. 1965; amd. Sec. 1, Ch. 283, L. 1971; amd. Sec. 97, Ch. 316, L. 1974.

#### Amendments

The 1971 amendment added the proviso to the first sentence; and added the second sentence.

The 1974 amendment substituted "de-

partment" for "commission" in the first sentence; and made minor changes in phraseology and punctuation.

#### Effective Date

Section 2 of Ch. 283, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 11, 1971.

**32-2606. Apportionment of state funds to federal-aid primary highway system.** (1) At the beginning of each fiscal year the department shall determine the amount of incompleted mileage of the federal-aid primary system within each of the financial districts.

(a) As a basis for determination of incompleted mileage, the department shall compare the present condition of the system with the latest approved state standards. Any mileage failing to meet those standards shall be included in the determination as partially completed. The proportion of completion shall be determined by estimating the amount of work which must be performed to complete the highway.

(2) The department shall then compute the ratio between the incompleted mileage in each district and the total incompleted mileage of the federal-aid primary system in the state.

(3) The department shall then apportion available state construction funds to the federal-aid primary system in each district on the basis of the computed ratio.



History: En. Sec. 4-309, Ch. 197, L. 1965; amd. Sec. 98, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "commission" throughout the section; and made minor changes in phraseology.

**32-2607. Apportionment of state funds to federal-aid secondary highway system.** (1) At the beginning of each fiscal year the department shall apportion available state construction funds for the federal-aid secondary highway system among the financial districts. The proportion which each district shall receive shall be computed on the following basis:

(a) One-fourth ( $1/4$ ) in the ratio of land area in each district to the total land area in the state.

(b) One-fourth ( $1/4$ ) in the ratio of the rural population in each district to the total rural population in the state.

(c) One-fourth ( $1/4$ ) in the ratio of the rural road mileage in each district to the total rural road mileage in the state.

(d) One-fourth ( $1/4$ ) in the ratio of value of rural lands in each district to the total value of rural lands in the state.

(2) Funds apportioned to each district shall be further apportioned to each county in the district on the same basis, considering ratios of land area, rural population, rural road mileage, and value of rural lands. To the extent necessary to permit orderly programming and construction of projects, expenditures in any county may exceed the amount apportioned to that county to the extent of three (3) times the amount of the last apportionment to the county. The amount of any excess expenditures shall be deducted from future apportionments to that county.

(3) For the purposes of this section, terms are defined as follows:

(a) Rural population—Total population less the population in cities over five thousand (5,000) persons and their unincorporated fringe urban areas as reported in the latest federal census.

(i) Federal census population figures shall be adjusted in the interim between censuses in accordance with the percentage of change in annual motor vehicle registration figures for each county.

(b) Rural road mileage—All road mileage outside of incorporated cities, exclusive of road mileage on the federal-aid primary highway system and the federal-aid interstate system.

(i) Rural road mileage reported by the road inventory of the department shall be used in determining rural road mileage.

(c) Value of rural lands—Includes the value of state-owned lands from which the state derives grazing, timber, and agricultural income.

(i) The basis for the value of rural lands shall be computed from the latest biennial report of the department of revenue.

(ii) The basis for the value of state-owned lands shall be computed from the latest figures on the total grazing, timber, and agricultural lands in each county contained in the latest biennial report of the department of state lands.

(iii) The average value of privately owned lands shall be the average value of state-owned lands, if the actual value is not available.

History: En. Sec. 4-310, Ch. 197, L. 1965; amd. Sec. 12, Ch. 391, L. 1973; amd. Sec. 99, Ch. 316, L. 1974.

#### Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of subdivision (3)(c)(i).

The 1974 amendment substituted "de-

partment" for "commission" in subdivision (1) and subdivision (3)(b)(i); substituted "department of revenue" for "state department of revenue" in subdivision (3)(c)(i); substituted "department of state lands" for "commissioner of state lands and investments" in subdivision (3)(c)(ii); and made minor changes in phraseology.

**32-2608. Secondary highway information.** On or before August 30 of each year, the department shall inform each board of county commissioners of:

(1) The total amount of secondary highway funds and the amount apportioned to each county.

(2) The location of proposed secondary highway projects when the information is available.

(3) Any other matters regarding secondary highway construction which the department considers advisable and of interest to the counties.

History: En. Sec. 4-311, Ch. 197, L. 1965; amd. Sec. 100, Ch. 316, L. 1974.

partment" for "commission" in two places; and made minor changes in phraseology.

#### Amendments

The 1974 amendment substituted "de-

**32-2609. Apportionment of state funds to federal-aid interstate highway system.** (1) At the beginning of each fiscal year the department shall apportion available state construction funds for the federal-aid interstate highway system among the financial districts.

(2) The apportionment shall be based upon the ratio between the estimated cost of constructing or reconstructing the system in each district and the estimated cost of constructing or reconstructing the entire system within the state.

(3) The cost estimates to be used shall be those developed by the department in accordance with the Federal-Aid Highway Act of 1956, as amended.

History: En. Sec. 4-312, Ch. 197, L. 1965; amd. Sec. 101, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "commission" in two places; and made minor changes in phraseology.

**32-2610. Increases in expenditures.** (1) The department may increase the expenditures made in a financial district to the extent of:

(a) Twenty-five per cent (25%) more than the amount of money allocated to the district in the latest year for the federal-aid primary system or the federal-aid secondary system.

(b) Three hundred per cent (300%) more than the amount of money allocated to the district in the latest year for the federal-aid interstate highway system.

(2) The allocation of available state construction funds to a district for the next succeeding fiscal year shall be decreased by an amount equal to any increased expenditures.

**History:** En. Sec. 4-313, Ch. 197, L. 1965; amd. Sec. 1, Ch. 290, L. 1973; amd. Sec. 102, Ch. 316, L. 1974; amd. Sec. 1, Ch. 318, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 316 and once by Ch. 318. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

The 1973 amendment increased the percentage specified in subdivision (1) (a) from 15% to 25%.

Chapter 316, Laws of 1974, substituted "department" for "commission" in subdivision (1) and made minor changes in phraseology.

Chapter 318, Laws of 1974, increased the percentage specified in subdivision (1)(b) from 100% to 300%.

### 32-2611. Apportionment of state funds to federal-aid urban highways.

(1) At the beginning of each fiscal year the department shall apportion state construction funds available for matching federal-aid urban funds to the cities in the state over five thousand (5,000) population in the ratio of urban population in each city to the total urban population in all cities over five thousand (5,000) population in the state.

(2) For the purpose of this section, "urban population" is defined as population within the incorporated limits of cities over five thousand (5,000) population and that population within unincorporated urban fringe areas delineated and reported in the latest federal census.

(3) To the extent necessary to permit orderly programming and construction of projects, expenditures in any city may exceed the amount apportioned to that city. The amount of any such excess expenditures shall be deducted from future apportionments to that city.

**History:** En. Sec. 4-314, Ch. 197, L. 1965; amd. Sec. 103, Ch. 316, L. 1974.

partment" for "commission" in subsection (1); and made minor changes in phraseology.

#### Amendments

The 1974 amendment substituted "de-

**32-2612. Interim apportionment to match federal-aid funds.** During the interim between legislative sessions, the department of highways is hereby delegated power and authority to develop formulas to apportion state construction funds in an equitable manner consistent with the intent of this act to match federal-aid funds for highway systems or purposes not enumerated in this act. Such apportionment formulas shall be valid only until approved, modified or rejected by the next succeeding legislative session.

**History:** En. 32-2612 by Sec. 1, Ch. 402, L. 1973.

highways to apportion state construction funds during the interim between legislative sessions.

#### Title of Act

An act to permit the department of

**32-2613. Allocation for safety construction programs.** Annually beginning July 1, 1974, and at the beginning of each fiscal year thereafter, the department of highways shall allocate available state construction funds to match federal aid highway funds made available by the Federal Aid Highway Act of 1973 for the following safety construction programs: rail-highway crossings, high hazard locations, elimination of roadside



obstacles, safer roads demonstration and pavement marking demonstration. Such allocation shall be made from available state construction moneys before the apportionments provided for in sections 32-2606, 32-2607 and 32-2611, R. C. M. 1947.

**History:** En. 32-2613 by Sec. 1, Ch. 216, funds to match federal-aid highway funds available for safety construction programs.  
L. 1974.

**Title of Act**

An act to allocate state construction

**32-2614. Replacement of bridges.** Whenever funds are made available under the Federal Aid Highway Act for the replacement of bridges, the department may:

(1) Allocate from state construction moneys such moneys as are necessary to match the available federal funds. Such allocation shall be made from available state construction moneys before the apportionments provided for in sections 32-2606, 32-2607 and 32-2611.

(2) Whenever such state construction moneys are so allocated, the amount so allocated shall be deducted from future apportionments to the financial district or city as follows:

(a) if the moneys are allocated for the replacement of a bridge located on the primary or urban system, the amount shall be deducted over a period of five (5) years; and

(b) if the moneys are allocated for the replacement of a bridge located on the secondary system, the amount shall be deducted over a period of ten (10) years.

**History:** En. 32-2614 by Sec. 1, Ch. funds to match federal-aid highway funds available for the replacement of bridges, and providing for the apportionment of such state construction funds.  
102, L. 1974.

**Title of Act**

An act to allocate state construction

**32-2615. Definition.** For the purposes of this section "priority primary routes" are defined as those high traffic sections of highways on the federal aid primary system which connect to the interstate system.

**History:** En. 32-2615 by Sec. 1, Ch. funds to match federal-aid highway funds available for priority primary routes; and providing for the apportionment of such state construction funds.  
106, L. 1974.

**Title of Act**

An act to allocate state construction

**32-2616. Selection of routes.** Such routes shall be selected by the department, in consultation with appropriate local officials, subject to the approval of the secretary of transportation for priority of improvement to supplement the service provided by the interstate system by furnishing needed adequate traffic collection and distribution facilities.

**History:** En. 32-2616 by Sec. 2, Ch. 106,  
L. 1974.

**32-2617. Allocation of funds.** Annually, beginning July 1, 1974, and at the beginning of each fiscal year thereafter, the department shall allocate available state construction funds for matching federal aid priority primary route funds. Such allocation shall be made from available state

construction moneys before the apportionments provided for in sections 32-2606, 32-2607 and 32-2611, R. C. M. 1947.

History: En. 32-2617 by Sec. 3, Ch. 106,  
L. 1974.

**32-2618. Apportionment of funds.** The department shall at the beginning of each fiscal year apportion available state construction funds among the approved priority primary routes. This apportionment shall be based on the ratio between the estimated cost of constructing or reconstructing each selected route and the estimated cost of constructing or reconstructing all then approved priority primary routes.

History: En. 32-2618 by Sec. 4, Ch. 106,  
L. 1974.

**32-2619. Excess expenditures.** To the extent necessary to permit orderly programming and construction of projects, expenditures on any route may exceed the amount apportioned to that route. The amount of any such excess expenditures shall be deducted from future apportionments to that route.

History: En. 32-2619 by Sec. 5, Ch. 106,  
L. 1974.

**32-2620. Economic growth center defined.** For the purposes of this section an "economic growth center" is defined as an area of population of less than one hundred thousand (100,000) which has been recommended for designation as such by the governor of Montana and approved by the secretary of transportation of the United States.

History: En. 32-2620 by Sec. 1, Ch. 105, L. 1974.

**Title of Act**

An act to allocate state construction

funds to match federal-aid highway funds available for economic growth centers; and providing for the apportionment of such state construction funds.

**32-2621. Department of highways shall determine centers.** For the purposes of this section the department of highways is authorized to determine and delineate the area influenced by designated economic growth centers. In so doing it shall take into account relevant geographic, economic, educational and recreational factors. The department is also authorized to determine and delineate those portions of existing highways which need to be upgraded to accommodate the existing and future needs of the traveling public.

History: En. 32-2621 by Sec. 2, Ch. 105, L. 1974.

**32-2622. Allocation of funds.** Annually, beginning July 1, 1974, and at the beginning of each fiscal year thereafter, the department shall allocate available state construction funds to match federal aid highway funds made available for economic growth center development highways. Such allocation shall be made from available state construction moneys before the apportionments provided in sections 32-2606, 32-2607 and 32-2611, R. C. M. 1947.

History: En. 32-2622 by Sec. 3, Ch. 105,  
L. 1974.

32-2623. **Apportionment of funds.** The department shall at the beginning of each fiscal year apportion state construction funds among the approved economic growth centers as follows:

(1) The allocation for the 1974 fiscal year shall be the ratio of the number of miles of highways that need upgrading in existence on July 1, 1973, on the primary and urban systems in each approved growth center's area of influence to the total number of miles in all approved growth centers' area of influence that need upgrading.

(2) Thereafter, the allocation shall be in the ratio of the number of miles in existence on July 1 of a fiscal year on the primary, secondary and urban systems in each approved growth center's area of influence that need upgrading to the total number of miles in all approved growth centers' area of influence that need upgrading.

(3) To the extent necessary to permit orderly programming and construction of projects, expenditures in any approved growth center may exceed the amount apportioned to the growth center. The amount of any such excess expenditures shall be deducted from future apportionments to that growth center.

History: En. 32-2623 by Sec. 4, Ch. 105, L. 1974.

## CHAPTER 27—MONTANA TOLL BRIDGE AUTHORITY

(Repealed—Section 209, Chapter 316, Laws of 1974)

### 32-2701 to 32-2716. Repealed.

#### Repeal

Sections 32-2701 to 32-2716 (Secs. 4-401 to 4-416, Ch. 197, L. 1965), relating to the

Montana toll bridge authority were repealed by Sec. 209, Ch. 316, Laws of 1974.

## CHAPTER 28—BOARD OF COUNTY COMMISSIONERS RESPONSIBILITY FOR COUNTY ROADS

Section 32-2801.	Powers and duties of county commissioners respecting county roads.
32-2802.	Right of way—contracts—control of traffic.
32-2803.	Plat books—surveyor—employees.
32-2805.	Inspection of roads and construction work—compensation.
32-2806.	Purchase of machinery and materials.
32-2807.	Use of county road machinery.
32-2808.	Width of road.
32-2809.	Highways to follow subdivision or section lines.
32-2810.	Auto passes excluding livestock.
32-2811.	Auto passes on county roads.
32-2812.	Limit on amount expended in road district.
32-2813.	Reseeding of right of way areas.
32-2814.	County supervisors to control weeds and exterminate weed seeds—charges.
32-2815.	Board and others to furnish information.
32-2816.	Designation of emergency area near construction project.
32-2817.	Notice of designation of emergency area—removal of designation.
32-2818.	Livestock not to run at large in emergency area.
32-2819.	Impounding of animals at large—notice to owner—fees and mileage.
32-2820.	Penalty for violations.

32-2801. Powers and duties of county commissioners respecting county roads. (1) Each board of county commissioners has general



supervision over the county roads within the county. The board may, in its discretion, divide the county into suitable road districts, and place each district in charge of a competent road supervisor. The board shall order and direct each supervisor in the work to be done in his district. If the board does not divide the county into districts, the county itself shall constitute one road district.

(2) Each board shall survey, view, lay out, record, open, work, and maintain county roads which are petitioned for by freeholders. Guideposts shall be erected.

(3) Each board shall discontinue or abandon county roads when freeholders properly petition therefor.

(4) Each board may, in its discretion, do whatever may be necessary for the best interest of the county roads and the road districts.

(5) Each board shall make reports relating to roads under its supervision which are requested by the department of highways.

**History:** En. Sec. 5-101, Ch. 197, L. 1965; amd. Sec. 104, Ch. 316, L. 1974. "Board of County Commissioners Responsibility for County Roads."

#### Compiler's Note

Chapters 28 to 31, inclusive, of this title were designated as Chapter 5 of the Highway Code, entitled "County Administration." This chapter was designated as Part 1 of Chapter 5, entitled

#### Amendments

The 1974 amendment substituted "department of highways" for "commission" in subsection (5); and made minor changes in phraseology and punctuation.

**32-2802. Right of way—contracts—control of traffic.** (1) Each board shall contract, agree for, purchase, or otherwise lawfully acquire right of way for county roads over private property. It may institute proceedings under sections 93-9901 to 93-9926, paying for such right of way from the county road fund. Cattle guards, appurtenances, and gates may be constructed and maintained adjacent to county roads.

(2) Subject to the limitations and restrictions provided in the codes for the letting of contracts, each board may let by contract the construction, maintenance and improvement of county roads, and the construction, maintenance, or repair of bridges when the amount of work to be done exceeds the sum of one thousand dollars (\$1,000).

(3) Subject to the limitations and restrictions provided in the constitution and codes, each board may issue bonds upon the faith and credit of the county for the construction or improvement of county roads, state highways, and bridges.

(4) Each board may, in its discretion, limit or forbid, temporarily, any traffic or class of traffic on the county roads or any part thereof, when it is necessary in order to preserve or repair such roads.

**History:** En. Sec. 5-102, Ch. 197, L. 1965.

**32-2803. Plat books—surveyor—employees.** (1) Each board may, in its discretion, order the county surveyor, or some other surveyor if the county surveyor is incompetent, to prepare suitable plat books. Each board shall have recorded in it with the county clerk a full descrip-

tion of each county road, showing each course by bearing and distance, a full and complete map of the road, and a record of all proceedings with reference to the road.

(2) Each board may, in its discretion, employ a competent road supervisor, who shall serve during the pleasure of the board. Under the direction and control of the board he shall:

(a) Prescribe the times and places for all work to be done on the county roads.

(b) Report any delinquency or inefficiency of any person employed on any road.

(c) Perform other duties which are prescribed by the board.

(3) In any county in which the county surveyor is not paid an annual salary, he may by agreement be employed by the board to perform the services of road supervisor. He shall not be paid for any duty otherwise required by law to be performed by him as county surveyor.

(4) In counties without a county surveyor, each board may appoint a county road superintendent. He shall have such duties, powers, and responsibilities as are set forth in chapter 30 of this title.

History: En. Sec. 5-103, Ch. 197, L. 1965; amd. Sec. 2, Ch. 274, L. 1967; amd. Sec. 105, Ch. 316, L. 1974.

#### Compiler's Note

Chapter 197, Laws 1965, the Highway Code, contained no sections 5-308 and 5-309 as referred to in paragraph (3) (a) of this section.

#### Amendments

The 1967 amendment added "In counties without a county surveyor" at the beginning of the first sentence of subsection (4), and added "chapter 30 of this

title" within parentheses at the end of the section.

The 1974 amendment deleted a subdivision (3)(a) stating that nothing in the section should be construed to alter or repeal "sections 5-308 and 5-309 of this chapter"; and made minor changes in phraseology.

#### Effective Date

Section 3 of Ch. 274, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

### 32-2804. Repealed.

#### Repeal

Section 32-2804 (Sec. 5-104, Ch. 197, L. 1965), relating to county contracts with

the state or federal government for the construction of roads, was repealed by Sec. 1, Ch. 265, Laws 1973.

### 32-2805. Inspection of roads and construction work—compensation.

(1) The board may direct the county surveyor or some member or members of the board to inspect the condition of any road. It may direct such persons to inspect any work, being done under contract or otherwise, which is under the direction, supervision, or control of the board. Such inspections may be made before any work is commenced, during its progress, or after completion and before payment.

(2) The person or persons making such inspections shall receive the sum of thirty-three dollars (\$33) per day and actual expenses if he receives no other compensation for that day and is not on an annual salary. The claims shall be audited and allowed in the same manner as other claims against the county.

(3) Proper minute entries of such inspections must be made by the surveyor or board member or members at the next regular meeting of the board.

**History:** En. Sec. 5-105, Ch. 197, L. 1965; amd. Sec. 1, Ch. 178, L. 1967; amd. Sec. 1, Ch. 446, L. 1973.

#### **Amendments**

The 1967 amendment increased payments to county surveyors and members

of county boards of commissioners under subsection (2) from \$15 to \$20 per day.

The 1973 amendment increased the daily rate specified in subsection (2) from \$20 to \$33; and inserted "if he receives no other compensation for that day and is not on an annual salary" at the end of the first sentence in subsection (2).

**32-2806. Purchase of machinery and materials.** (1) Out of the county road fund, each board may:

(a) Purchase and operate grading and other machinery necessary or desirable for the improvements of the county roads.

(b) Acquire deposits or quarries of suitable road-building material by purchase, condemnation, or lease.

(2) Each board may also acquire such road-building material by gift.

(3) Any crushed rock or gravel not directly used or needed by the county in the construction, repair, or maintenance of its roads, may be sold by the board at not less than actual cost of production to any person, firm, or corporation desiring to use it upon any public street or highway in the county. The proceeds of any such sale shall be paid into the county road fund.

**History:** En. Sec. 5-106, Ch. 197, L. 1965.

**32-2807. Use of county road machinery.** Each board may, in its discretion, authorize and permit the use of any county highway or road machinery or equipment when not in use in any district, in connection with the construction, repair and maintenance of streets, avenues and alleys within any incorporated city or town of four thousand (4,000) population or less located in the county.

**History:** En. Sec. 5-107, Ch. 197, L. 1965.

**32-2808. Width of road.** (1) The width of all county roads, except bridges, alleys, or lanes, must be sixty (60) feet unless a greater or smaller width is ordered by the board on petition of an interested person.

(2) The width of all private highways and byroads, except bridges, must be at least twenty (20) feet.

(3) Nothing in this section shall be construed as increasing or decreasing the width of either kind of highway or road already established or used as such.

**History:** En. Sec. 5-108, Ch. 197, L. 1965.

#### **Applicability**

Statute was intended by legislature to

apply only to public roads which were laid out by official act of proper public officials and was never intended to apply to prescriptive easements. *State v. Portmann*, 149 M 91, 423 P 2d 56.

**32-2809. Highways to follow subdivision or section lines.** County roads must be laid out and opened when practicable upon subdivision or



section lines. However, when public purposes shall be best served thereby, roads may be laid out in diagonal lines.

History: En. Sec. 5-109, Ch. 197, L.  
1965.

**32-2810. Auto passes excluding livestock.** Where a county road connects with a state or federal highway which is fenced on both sides, the board may construct and maintain extensions of the fence across the right of way of the intersecting county road. The board shall construct a pass which will permit passage of vehicles but will prevent loose livestock from passing onto the state or federal highway. In the extensions of the fence, there shall be maintained a gate to permit the passage of livestock and vehicles.

History: En. Sec. 5-110, Ch. 197, L.  
1965.

**32-2811. Auto passes on county roads.** Each board may construct on county roads passes which shall permit the travel of vehicles but which shall prevent the passage of loose livestock. Where necessary, gates shall be maintained to permit the passage of livestock. Such passes may be removed when, in the judgment of the board, the need therefor no longer exists.

History: En. Sec. 5-111, Ch. 197, L.  
1965.

**32-2812. Limit on amount expended in road district.** The expenditures in any road district for labor and equipment, together with the compensation to be paid to the supervisor, shall not exceed the sum apportioned quarterly by the board to that district. However, if that sum is not sufficient, the board may appropriate any amount from the county road fund necessary for the use of such district. The full amount of all road taxes collected in remote districts shall be expended annually by the county commissioners on the roads within such districts.

History: En. Sec. 5-112, Ch. 197, L.  
1965.

**32-2813. Reseeding of right of way areas.** (1) Whenever the natural sod cover on right of way areas is disturbed by construction of county roads, irrigation ditches, drain ditches, or otherwise, the board shall require that such disturbed areas be seeded to an adaptable perennial grass or combination of perennial grasses and legumes. Every effort shall be made to establish a sod cover on the disturbed area.

(2) All seed used shall meet certified standards.

(3) Time and method of seeding, fertilizing practices, and grass species shall be those recommended by the Montana extension service.

History: En. Sec. 5-113, Ch. 197, L.  
1965.

**32-2814. County supervisors to control weeds and exterminate weed seeds—charges.** The board of weed control and weed seed extermination supervisors shall control noxious weeds on the county roads. If the

department does not control noxious weeds on state and federal highways in any county, the supervisors shall control them. Upon presentation by the supervisors of a verified account of the expenses incurred, the costs of control shall be paid by the department.

**History:** En. Sec. 5-114, Ch. 197, L. 1965; amd. Sec. 106, Ch. 316, L. 1974.

partment" for "commission" in two places; and made a minor change in phraseology.

#### Amendments

The 1974 amendment substituted "de-

**32-2815. Board and others to furnish information.** The board and road supervisor of a county, and all other officers who may have the care and supervision of the public highways and bridges, shall, upon the written request of the department, furnish all available information in connection with the construction and maintenance of the highways and bridges in their respective districts or counties.

**History:** En. Sec. 5-115, Ch. 197, L. 1965; amd. Sec. 107, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "commission"; and made a minor change in phraseology.

**32-2816. Designation of emergency area near construction project.** A board of county commissioners may designate a portion of a county or state secondary road as an emergency area if increased traffic due to a construction project threatens public safety.

**History:** En. Sec. 1, Ch. 118, L. 1963; Sec. 32-317, R. C. M. 1947; redes. 32-2816 by Sec. 2, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment renumbered this section.

**32-2817. Notice of designation of emergency area—removal of designation.** Notice of the designation shall be printed in a newspaper of general circulation in the county. The notice shall describe the portion of road to be designated as an emergency area and the reason for the designation. The board shall post the area or roads affected with adequate signs. The board shall remove the emergency designation within thirty (30) days after the cessation of the increased traffic.

**History:** En. Sec. 2, Ch. 118, L. 1963; Sec. 32-318, R. C. M. 1947; amd. and redes. 32-2817 by Sec. 3, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; and made minor changes in phraseology.

**32-2818. Livestock not to run at large in emergency area.** A person who owns or has custody of livestock may not permit the livestock to run upon the emergency area unless the livestock are under herd in transit across the emergency area in the custody of an attendant.

**History:** En. Sec. 3, Ch. 118, L. 1963; Sec. 32-319, R. C. M. 1947; amd. and redes. 32-2818 by Sec. 4, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; and made a minor change in phraseology.

**32-2819. Impounding of animals at large—notice to owner—fees and mileage.** A sheriff or other peace officer may impound livestock running on an emergency area without an attendant and shall notify the right-

ful owner of such impounded livestock. If the sheriff or peace officer cannot determine the rightful owner, then a state stock inspector of the department of livestock or a deputy state stock inspector of the county may be called to examine the livestock for brands to determine ownership. The rightful owners shall be notified by the inspector and the usual inspection fees and mileage shall be paid by the owner of such livestock.

**History:** En. Sec. 4, Ch. 118, L. 1963; Sec. 32-320, R. C. M. 1947; amd. and redes. 32-2819 by Sec. 5, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; inserted "of the department of livestock" after "state stock inspector"; and made a minor change in phraseology.

**32-2820. Penalty for violations.** A person who violates section 32-2818 is guilty of a misdemeanor and shall be fined not less than ten dollars (\$10) nor more than fifty dollars (\$50) for each violation.

**History:** En. Sec. 5, Ch. 118, L. 1963; Sec. 32-321, R. C. M. 1947; amd. and redes. 32-2820 by Sec. 6, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; substituted "section 32-2818" for "this act"; and made minor changes in phraseology.

## CHAPTER 29—BOARD OF COUNTY COMMISSIONERS RESPONSIBILITY FOR BRIDGES AND FERRIES

- Section 32-2901.** County to maintain bridges.  
**32-2902.** Bridges over streams in cities and towns.  
**32-2903.** Election to determine question of construction—bonds—special levy.  
**32-2904.** Removal of obstructions and repair of bridges.  
**32-2905.** Bridges under control and management of board—police regulations.  
**32-2906.** Construction and maintenance of bridges crossing county lines.  
**32-2907.** Ferries uniting two counties—report of ferrymen on joint ferries.

**32-2901. County to maintain bridges.** Each board shall maintain all public bridges other than those maintained by the department of highways.

**History:** En. Sec. 5-201, Ch. 197, L. 1965; amd. Sec. 108, Ch. 316, L. 1974.

titled "Board of County Commissioners Responsibility for Bridges and Ferries."

#### Compiler's Note

This chapter was designated as Part 2 of Chapter 5 of the Highway Code, en-

#### Amendments

The 1974 amendment substituted "department of highways" for "commission."

**32-2902. Bridges over streams in cities and towns.** (1) Each board shall construct and maintain every bridge over a natural stream necessary to be constructed and maintained in any city or town.

(2) The city or town in which any such bridge is situated shall pay the whole or such part, not less than one-half ( $\frac{1}{2}$ ), to be determined by the board, of the cost of planking, replanking, paving or repaving the bridge. The city or town shall construct and maintain in good repair the bridge approaches.

**History:** En. Sec. 5-202, Ch. 197, L. 1965.

**32-2903. Election to determine question of construction—bonds—special levy.** (1) Before undertaking the construction of any bridge



the cost of which shall exceed ten thousand dollars (\$10,000), in any city or town, the board shall submit to the qualified electors of the county, at a general or special election, the question of whether the bridge shall be constructed and its cost paid by the county.

(2) If the electors vote in favor of construction, the board may issue and sell bonds of the county to the amount authorized for the construction of the bridge. Bonds shall be issued under such regulations as apply to other bonds of the county.

(3) The bridge shall be constructed using the proceeds of such sale.

(4) If the cost of the bridge does not exceed the amount authorized to be raised by a special tax, it may be levied as provided in section 7-104 [32-3604] of this code.

History: En. Sec. 5-203, Ch. 197, L. 1965.

**32-2904. Removal of obstructions and repair of bridges.** (1) Whenever any county road becomes obstructed, or any bridge needs repair or becomes dangerous for the passage of vehicles or persons, the board or the county surveyor, if he is in charge, shall remove the obstruction or repair the bridge, upon being notified thereof.

(2) Nothing in this section shall be construed as holding the board, or any member, responsible or liable for anything other than willful, intentional neglect or failure to act.

History: En. Sec. 5-204, Ch. 197, L. 1965.

**32-2905. Bridges under control and management of board—police regulations.** (1) The board shall manage and control all bridges referred to in this part [chapter]. It shall direct the method and time of making repairs, planking, replanking, paving and repaving.

(2) The board may also make repairs to stream beds and water-courses and the banks thereof when any bridge is in danger of being damaged or lost because of erosion or changes in the beds or banks.

(3) Such bridges and all persons on them shall be subject to the reasonable police regulations of the city or town in which any such bridge is situated.

History: En. Sec. 5-205, Ch. 197, L. 1965.

**32-2906. Construction and maintenance of bridges crossing county lines.** Bridges crossing the line between counties shall be constructed and maintained by the counties into which the bridges reach. Each county shall pay such portion of the costs of construction and maintenance as shall have been previously agreed upon by the respective boards.

History: En. Sec. 5-206, Ch. 197, L. 1965.

**32-2907. Ferries uniting two counties—report of ferrymen on joint ferries.** (1) When a public ferry, if constructed would unite two coun-

ties, the boards may act jointly to construct, maintain, and operate it. Each county shall acquire and maintain its own landings and approaches.

(2) When ferrymen are employed on joint ferries, they shall report quarterly to each board, giving such information as each board may require.

History: En. Sec. 5-207, Ch. 197, L.  
1965.

## CHAPTER 30—COUNTY ROAD SUPERINTENDENT

- Section 32-3001. County road superintendent—appointment and compensation.  
32-3002. Duties of county road superintendent.  
32-3003. Accounts and statements.  
32-3004. Examination of superintendent's report—warrant for claims.  
32-3005. Equipment, tools, and implements for use of superintendent.  
32-3006. Employment of laborers—hiring of equipment.  
32-3007. Construction of drains and ditches—penalty for obstructions.

**32-3001. County road superintendent—appointment and compensation.** (1) After his appointment, the county road superintendent shall serve at the pleasure of, and under the direction and control of the board. He shall file with the county clerk the customary oath of office and a bond approved by the board for the faithful performance of his duties.

(2) He shall receive such compensation as is determined by the board.

History: En. Sec. 5-301, Ch. 197, L.  
1965.

### Compiler's Note

This chapter was designated as Part 3 of Chapter 5 of the Highway Code, entitled "County Road Superintendent."

**32-3002. Duties of county road superintendent.** (1) Under the direction and supervision of the board, the superintendent shall furnish plans and specifications for highway or bridge work. He shall be chairman of all boards of road viewers.

(2) Under such direction and supervision, he shall also:

(a) Take charge of all roads, bridges and causeways under the jurisdiction of the county.

(b) Open all new roads when they are duly established and ordered to be opened by the board.

(c) Perform at the time and in the manner directed by the board whatever shall be lawfully directed by the board concerning the public highways under the jurisdiction of the county.

History: En. Sec. 5-302, Ch. 197, L.  
1965.

**32-3003. Accounts and statements.** The superintendent shall keep correct accounts of all labor performed, equipment and implements used, and materials furnished. He shall give to each person performing work, or furnishing equipment, implements, or materials a certificate stating the work performed and the price to be paid therefor.

History: En. Sec. 5-303, Ch. 197, L.  
1965.

**32-3004. Examination of superintendent's report—warrant for claims.** At the first monthly or quarterly meeting held after filing of the superintendent's report, the board shall examine it. Upon the presentation of any certificate issued by the superintendent, and verification of it by the holder, as in other cases of claims against the county, the board shall cause to be issued a warrant for the amount of the certificate drawn on the treasurer against the county road fund.

History: En. Sec. 5-304, Ch. 197, L. 1965.

**32-3005. Equipment, tools, and implements for use of superintendent.** Upon the requisition of the superintendent, the board shall furnish any equipment, tools, and implements necessary, and pay for them out of the county road fund. The superintendent shall preserve the equipment, tools, and implements, and shall not allow them to be used except on public highways. At the expiration of his term of office, or upon his removal therefrom, he must turn over all equipment, tools, and implements to his successor or to the board.

History: En. Sec. 5-305, Ch. 197, L. 1965.

**32-3006. Employment of laborers—hiring of equipment.** Whenever it is necessary, the superintendent may employ suitable laborers, hire equipment and implements, and contract as to the wages and prices to be paid. Wages and prices shall not exceed rates established by the board for an eight-hour day.

History: En. Sec. 5-306, Ch. 197, L. 1965.

**32-3007. Construction of drains and ditches—penalty for obstructions.** (1) The superintendent may open or construct drains and ditches for making and preserving roads and highways, doing as little injury as may be possible to the adjoining land.

(2) Any person who stops or obstructs any drain or ditch so constructed forfeits the sum of fifty dollars (\$50.00), to be recovered by the superintendent or board in a civil action in any court of competent jurisdiction.

(3) Any person aggrieved by the act of the superintendent may make a written complaint to the board, which if it finds the complaint valid, may pay damages out of the county road fund.

History: En. Sec. 5-307, Ch. 197, L. 1965.

## CHAPTER 31—LOCAL IMPROVEMENT DISTRICTS

- |         |          |   |
|---------|----------|---|
| Section | 32-3101. | Duty of board to construct roads and levy assessments.        |
|         | 32-3102. | Petition for construction or improvement of road.             |
|         | 32-3103. | Resolution of public interest.                                |
|         | 32-3104. | Proceedings upon receipt of petition.                         |
|         | 32-3105. | Proceedings at meeting.                                       |
|         | 32-3106. | Duties of committee and road superintendent.                  |
|         | 32-3107. | Report of county road superintendent—order creating district. |



- 32-3108. Sharing of costs—order of board.
- 32-3109. Payment of county's share of expense.
- 32-3110. Formation and boundaries of district.
- 32-3111. Assessment of lands in each part—lien.
- 32-3112. Method of assessment.
- 32-3113. Appointment of inspector—compensation of inspector and committee.
- 32-3114. Construction by county—lien.
- 32-3115. Apportionment of costs—assessment roll—contents.
- 32-3116. Notice—confirmation—errors.
- 32-3117. Correction of errors—lien.
- 32-3118. Modes of payment of assessment.
- 32-3119. Immediate payment—notice to landowners.
- 32-3120. Contents of notice.
- 32-3121. Installment payment procedure—county treasurer to collect.
- 32-3122. Board provides method of payment.
- 32-3123. Order for issuance of bonds—form and contents.
- 32-3124. Notice in case of payment by special bonds—contents.
- 32-3125. Payment of assessment—redemption by payment.
- 32-3126. Issuance of special bonds to contractor—sale of bonds.
- 32-3127. Payment of interest—retirement.
- 32-3128. Collection of assessments by suit of owner of bonds.
- 32-3129. Auditing and payment of claims and accounts.
- 32-3130. Estimates of work completed—payment therefor.
- 32-3131. Disposition of residue of funds.

**32-3101. Duty of board to construct roads and levy assessments.** (1) Upon proper petition, as hereinafter provided, the board shall cause county roads to be laid out, opened, constructed and improved.

(2) The board shall levy and cause to be collected an assessment upon all parcels of land specifically benefited by the laying out, opening, construction, or improvement for paying the costs thereof.

(3) The assessment shall be a first lien upon the land liable, prior and superior to all other liens and encumbrances.

(4) The board shall provide for the payment of assessments either on the immediate payment plan or by installments.

(5) The board shall issue local improvement district bonds and coupons for each installment.

**History:** En. Sec. 5-401, Ch. 197, L. 1965.

**Compiler's Note**

This chapter was designated as Part 4 of Chapter 5 of the Highway Code, entitled "Local Improvement Districts."

**32-3102. Petition for construction or improvement of road.** (1) A petition for laying out, opening, constructing, or improving a county road may be presented to the board by the owners of two-thirds (2/3) of the lineal feet of land fronting on the proposed or existing road.

(a) If any such land stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator, or guardian shall be equivalent to the signature of the owner.

(2) The petition must set forth:

(a) That the petitioners are such owners and that they desire the petitioned action.

(b) The kind and nature of the improvement desired.

(c) The mode of payment of the assessments to be levied for defraying the cost thereof.

(d) The portion of the costs which the district, if formed, will assume and pay.

(i) It must not be less than thirty-five per cent (35%) of the costs, and may be as much as seventy-five per cent (75%) thereof.

History: En. Sec. 5-402, Ch. 197, L.  
1965.

**32-3103. Resolution of public interest.** Upon receipt of the petition, the board shall pass a resolution that the public interest demands the laying out, opening, constructing or improving of the road, or part thereof, described in the resolution. The description shall not include any portion of any road within the boundaries of any city or incorporated town.

History: En. Sec. 5-403, Ch. 197, L.  
1965.

**32-3104. Proceedings upon receipt of petition.** (1) After receipt of the petition and passage of the resolution, the board shall make an order fixing a time and place in the vicinity of the road for a meeting between the county road superintendent or his deputy and the petitioners and all owners upon whose lands special assessments will be levied.

(2) The county clerk shall immediately notify the county road superintendent of the meeting and shall cause a notice thereof to be printed in the newspaper published nearest to the vicinity of the road. The notice shall be published for three (3) consecutive weeks prior to the time of the meeting.

(3) The notice shall state the time and place of the meeting, and in general terms the kind of construction or improvement sought, and the places of beginning, intermediate points and termination.

History: En. Sec. 5-404, Ch. 197, L.  
1965.

**32-3105. Proceedings at meeting.** (1) The petitioners and all owners of land fronting on the road or land owned within two miles on either side of it upon which special assessments will be levied may meet with the superintendent or his duly appointed deputy.

(2) The superintendent or his deputy, or, in their absence one of the landowners present, shall preside. Those present shall elect three as a committee of supervisors; at least one of them shall be a petitioner.

(a) A majority of the owners present and voting shall be sufficient for election. The presiding officer shall certify to the board the names of the owners elected to the committee.

(3) Those elected shall qualify immediately by taking an oath that they are owners of land benefited by the improvements and to be included within the local assessment district. They shall take an oath that they will fully, impartially, and faithfully perform their duties as supervisors.

(4) The superintendent or his deputy may administer the oath, or it may be administered by anyone so authorized by law.

History: En. Sec. 5-405, Ch. 197, L.  
1965.

**32-3106. Duties of committee and road superintendent.** (1) The committee and the surveyor or his deputy shall:

- (a) Immediately view, examine, and survey the road petitioned for.
- (b) Examine and determine the lands which will be specifically benefited by the road and which should be included within the district that is to be assessed.
- (c) Ascertain whether any damage or injury to property will be sustained by or in consequence of the making of the road.
- (d) Obtain, if possible, without cost the release in writing of each person of his claim for such damage or injury.
- (e) Arrange, when necessary, for a release to be given for such amount as may be fair and reasonable.

(2) The road superintendent shall without delay prepare plans and specifications and cost estimates. He shall prepare a plat and description of the local assessment district and a description of the parcels of land included in the district. The valuation of the lands shall be that which appears on the last annual assessment roll of the county for the levying of general taxes.

**History:** En. Sec. 5-406, Ch. 197, L. 1965.

**32-3107. Report of county road superintendent—order creating district.** (1) At the next annual meeting of the board after the road superintendent has completed surveying the road and making estimates, he shall make a detailed report.

(a) The report shall state that the maps, descriptions, plans, specifications, and details and estimates of damages, costs, and expenses have been completed.

(2) The whole amount of damages, costs and expenses shall not exceed fifty per cent (50%) of the total assessed valuation of the parcels of land in the district, as determined from the last annual assessment roll of the county. If it does not, the board shall make and enter upon the report an order that the road be made.

(3) That order shall create the local improvement district to be known and designated as local improvement district No. ——— in ——— county, Montana. Copies of the report shall be kept in the offices of the board and road superintendent.

**History:** En. Sec. 5-407, Ch. 197, L. 1965.

**32-3108. Sharing of costs—order of board.** The board may enter an agreement to share costs with the district when the petition presented states the proportion which the district will pay. After such an agreement has been made, specifying the amount to be paid by the district and the amount to be paid from county funds, the board shall make an order to that effect on the records of its proceedings.

**History:** En. Sec. 5-408, Ch. 197, L. 1965.



**32-3109. Payment of county's share of expense.** The board shall order paid from county funds the share of the county for construction or improvement of the road. However, payment shall not exceed sixty-five per cent (65%) of the cost. This amount shall be a proper charge against the county and shall be paid by the treasurer upon warrants duly drawn as ordered by the board.

History: En. Sec. 5-409, Ch. 197, L.  
1965.

**32-3110. Formation and boundaries of district.** (1) The boundaries of each local assessment district shall be fixed as follows:

(a) The lands extending from the center of the road one-half ( $\frac{1}{2}$ ) mile on each side thereof [measuring one (1) mile in width] shall constitute "Part One" of the district.

(b) The lands embraced within an area one (1) mile wide on each side of Part One shall constitute "Part Two" of the district.

(c) The lands embraced within an area one (1) mile wide on either side of Part Two shall constitute "Part Three" of the district.

(2) Each of the parts shall extend the full length of the proposed road and one mile beyond the terminus unless the committee shall otherwise provide.

History: En. Sec. 5-410, Ch. 197, L.  
1965.

**32-3111. Assessment of lands in each part—lien.** (1) Each separate parcel of land in Part One shall be assessed for its proportion of forty-five per cent (45%) of the whole cost payable by the district.

(2) Each separate parcel of land in Part Two shall be assessed for its proportion of thirty-five per cent (35%) of the cost.

(3) Each separate parcel of land in Part Three shall be assessed for its proportion of twenty per cent (20%) of the cost.

(4) All of the lands in each part shall be subject to a lien for all of the assessments of that part until they have been paid.

History: En. Sec. 5-411, Ch. 197, L.  
1965.

**32-3112. Method of assessment.** (1) The assessments upon the parcels of land in each part shall be made ratably according to the front-foot plan, as follows:

(a) The unit used to determine the proportion of assessment shall be one foot of longitude measured along the road constituting the center of the district and extending latitudinally across the part.

(b) Because units in each part may not be equal, assessment rates for each part shall be determined for eight hundred eighty (880) square feet of surface.

(2) If the areas of the parts are not equal, the rates fixed for parts one, two, and three shall be related to each other as are the numbers forty-five (45), thirty-five (35) and twenty (20), respectively.

History: En. Sec. 5-412, Ch. 197, L.  
1965.

**32-3113. Appointment of inspector—compensation of inspector and committee.** (1) The committee and road superintendent together shall appoint some suitable and competent person other than they to act as an inspector of the work. He shall be upon the work at all times during its progress and inspect the performance thereof. He shall report to and be under the supervision of the superintendent.

(2) He shall be paid for his services as inspector at the rate of five dollars (\$5) per day for the time he is actually engaged thereon.

(3) Each supervisor shall be paid the sum of three dollars (\$3) per day for the time the committee is actually engaged in meeting and acting with the superintendent and in transacting the business of the district. No mileage or other expense money shall be paid.

**History:** En. Sec. 5-413, Ch. 197, L. 1965.

**32-3114. Construction by county—lien.** (1) If bids for construction and improvement are rejected by the committee, the district may contract with the board to construct or improve the road.

(2) Roads in districts may be constructed and improved in the first instance at the entire expense of the county, and the county may, as far as practicable, take the place of a private contractor.

(3) When the county has paid for construction and improvements, it shall be recompensed for by the district in accordance with their agreement. If bonds were issued under the installment plan, they shall become the property of the county.

(4) The county shall have the same lien as if the contract had been let to a private contractor.

**History:** En. Sec. 5-414, Ch. 197, L. 1965.

**32-3115. Apportionment of costs—assessment roll—contents.** (1) When the order for improvement and construction has been made by the board, the committee and the county assessor shall apportion the estimated cost and expenses to the land in the district.

(2) Within thirty (30) days before the letting of the contract, the assessor shall report to and file with the board and the treasurer an assessment roll in duplicate. It shall contain the description of each parcel of land to be assessed, the amount to be assessed against it, and the name of the owner, if known. In no case shall a mistake in the name of the owner be fatal to the assessment when the description of the land is correct.

**History:** En. Sec. 5-415, Ch. 197, L. 1965.

**32-3116. Notice—confirmation—errors.** (1) As soon as the assessment roll is reported and filed, the board shall publish notice for three consecutive weeks in the newspapers in which notice of invitations for bids for the contract was published. The notice shall notify all persons

interested that the assessment roll has been filed, and require them to appear at the office of the board at the county seat at a time not less than fifteen (15) days from the date of the last publication of the notice to make objections.

(2) At the time fixed, the board and the assessor shall meet. If no objections have been filed, the board shall make an order confirming the assessment roll. If written objections, properly verified, have been filed, the board shall hear the objections, receiving any testimony from any party involved.

History: En. Sec. 5-416, Ch. 197, L.  
1965.

32-3117. Correction of errors—lien. (1) After the hearing, the board shall make such corrections as appear just to apportion the assessment to the benefit to be received. It shall then make and enter an order approving and certifying the assessment roll.

(2) With the aid of the assessor, the board shall levy and assess the amounts on the assessment roll against the parcels of land, or parts thereof.

(3) The assessment so made shall be a first lien on the land described in the assessment roll.

History: En. Sec. 5-417, Ch. 197, L.  
1965.

32-3118. Modes of payment of assessment. The petition shall state whether the landowners want to make payment by the mode of "immediate payment" or by payments in installments. Installment payments shall be made in six equal portions, in one (1), two (2), three (3), four (4), five (5), and six (6) years. Payments shall be in the form of bonds which shall draw six per cent (6%) interest per annum from the date they are issued until they are paid.

History: En. Sec. 5-418, Ch. 197, L.  
1965.

32-3119. Immediate payment—notice to landowners. (1) If immediate payment is chosen, the board shall deliver the assessment roll to the county clerk as soon as it has been proved and certified. The clerk shall file a duplicate in his office and immediately deliver the other to the treasurer.

(2) The treasurer shall publish a notice for two consecutive weeks in the newspapers in which the notice for bids was advertised and shall mail a copy of the notice to the owners of the land assessed, when the name and post-office address of the owner are known.

(a) Failure to mail notice shall not be fatal to the assessment when it has been published.

History: En. Sec. 5-419, Ch. 197, L.  
1965.

32-3120. Contents of notice. The notice shall state the following: (1) The assessment roll has been certified to the treasurer for collection.



(2) Unless payment is made within thirty (30) days from the date of the notice, the payment will become delinquent and shall bear interest at the rate of ten per cent (10 %) per annum.

(3) If the assessment is not paid before it becomes delinquent, a penalty of five per cent (5 %) shall be added, as well as the interest on the annual tax roll for the current year.

(4) The interest and penalty shall be collected, together with such additional charges as are authorized to be charged and collected on other delinquent taxes.

(5) The land assessed shall be sold for the amount of the assessment with interest, penalty, and costs, in the manner and with the same authority as lands are sold for general taxes.

**History:** En. Sec. 5-420, Ch. 197, L. 1965.

**32-3121. Installment payment procedure—county treasurer to collect.**

(1) If the mode of payment is to be by installments, the board and the committee shall approve and certify the assessment roll.

(2) The board and the assessor shall, at the time of levying the assessment, in their order setting the levy, declare that the sum charged against each parcel of land may be paid in equal annual installments with interest upon the whole sum at the rate fixed by the board of county commissioners in accordance with law. The order shall specify the number of installments which shall be equal to the number of years for which the bonds may run.

(3) Each year thereafter, the treasurer shall collect one of the installments together with the interest due thereon and the interest due on the installments thereafter to become due.

(4) Provisions concerning delinquency and the sale of land set forth with relation to the mode of immediate payment shall be likewise applicable to installment payments.

**History:** En. Sec. 5-421, Ch. 197, L. 1965; amd. Sec. 27, Ch. 234, L. 1971.

by the board of county commissioners in accordance with law" for "of six per cent (6%) per annum" at the end of the first sentence of subsection (2).

**Amendments**

The 1971 amendment substituted "fixed

**32-3122. Board provides method of payment.** When improvement is ordered upon a petition specifying the method of payment of bonds, the board shall provide that the payment of costs and expenses be made under the provisions of this part [chapter] by bonds charged against the lands in the district. The bonds may be issued to the contractors in payment or costs may be paid by the proceeds of the bonds to be issued and sold as hereinafter provided. In all other cases, the board may so provide.

**History:** En. Sec. 5-422, Ch. 197, L. 1965.

**32-3123. Order for issuance of bonds—form and contents.** (1) The board shall make and enter an order authorizing and directing the issuance of bonds payable not more than ten (10) years after the date of issuance.

(2) Each bond shall provide that the holder shall not demand payment until it comes due. It shall bear interest, payable annually, and shall have interest coupons for each interest payment attached.

(3) Each bond and coupon shall bear the date of issuance and be made payable to bearer. Each bond shall be signed by the chairman of the board and attested by the county clerk. The seal of the board shall be affixed to each bond.

(4) Bonds shall be issued in denominations of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000).

(5) Each bond shall contain a reference to the district for which it is issued and to the order and record authorizing the issue. It shall state that it is payable only out of the local improvement funds, created by special assessment, and not otherwise.

(6) On its face, each bond shall bear the designation of the district: "Local Improvement District No. \_\_\_\_\_ in \_\_\_\_\_ county, Montana."

(7) No bond shall be issued in excess of the costs and expenses of the improvements and construction.

History: En. Sec. 5-423, Ch. 197, L. 1965; amd. Sec. 28, Ch. 234, L. 1971.

rate of six per cent (6%) per annum" after "bear interest" in the second sentence of subsection (2); and made a minor change in style.

#### Amendments

The 1971 amendment deleted "at the

**32-3124. Notice in case of payment by special bonds—contents.** (1) If the board provides that payment of costs shall be made by the issuance of bonds, the treasurer shall publish notice for two consecutive weeks and mail a copy of the notice in the same manner as is provided with relation to immediate payment.

(2) The notice shall state that:

(a) The assessment roll has been certified to the treasurer for collection.

(b) Unless payment of the whole amount of the assessment is made within thirty (30) days from the date of the notice, special bonds shall be issued against the lands in the district for the payment of the assessment.

(c) If bonds are issued, they will be payable in annual installments with interest thereon at the rate provided in the bonds.

History: En. Sec. 5-424, Ch. 197, L. 1965.

**32-3125. Payment of assessment—redemption by payment.** (1) At any time within thirty (30) days after notice, the owner may pay the assessment and release and discharge his lands therefrom and from the operation and effect of the bonds.

(2) No bonds shall be issued until twenty (20) days after the expiration of thirty (30) days after notice. No bonds shall be issued for any assessment paid in full within the thirty (30) days.

(3) The owner of lands may redeem them from all liability for assessment at any time after the thirty (30) days by paying all of the assessment

remaining unpaid, together with interest and all charges thereon to the date of maturity of the installment next falling due.

(4) All payments shall be made to the treasurer, who shall apply them solely to the costs of the improvement or construction.

History: En. Sec. 5-425, Ch. 197, L.  
1965.

**32-3126. Issuance of special bonds to contractor—sale of bonds.** Bonds ordered sold by the board may be issued to the contractor constructing the improvement in payment. The board may also direct, in the order providing for issuance of the bonds, that they be sold by the treasurer at not less than par value and accrued interest. The proceeds of such bonds shall be applied in payment of the costs and expenses of the improvement.

History: En. Sec. 5-426, Ch. 197, L.  
1965.

**32-3127. Payment of interest—retirement.** (1) The treasurer shall pay the interest on the bonds out of the funds of the district collected on assessments for the bonds.

(2) Whenever there is money in the fund against which the bonds have been issued over and above the amount sufficient for the payment of interest on all unpaid bonds, it shall be used to pay the principal on one or more of the bonds. The treasurer shall call in and pay the bonds in their numerical order.

(3) The call shall be published in the county official newspaper on the day following the maturity date of the installment of assessment, or as soon thereafter as practicable. It shall state that special bonds No. ----- (giving the serial number or numbers of the bonds called) of the district will be paid on the day the next interest coupons become due. Interest upon the bonds thus called shall cease upon that date.

History: En. Sec. 5-427, Ch. 197, L.  
1965.

**32-3128. Collection of assessments by suit of owner of bonds.** (1) If the treasurer fails, neglects, or refuses to pay bonds or to collect promptly any assessments when due, the owner of any bonds may proceed in his own name to collect the assessments and to foreclose the lien in any court of competent jurisdiction. In addition to the amount of the assessments and interest thereon, any such owner shall recover five per cent (5 %) and the costs of his suit.

(2) Any number of holders of bonds for any single district may join as plaintiffs, and any number of owners of land on which the bonds are a lien may be joined as defendants.

(3) Neither the holder nor any owner of any bond shall have any claim against the county through which the bond is issued except for the assessment. His remedy in case of nonpayment shall be confined to the enforcement of the assessments.



(4) A copy of this section shall be plainly written, printed, or engraved on each bond.

History: En. Sec. 5-428, Ch. 197, L. 1965.

**32-3129. Auditing and payment of claims and accounts.** (1) The committee shall approve and certify all claims and accounts for services and every kind of expense payable from funds of the district.

(2) The county auditor, or the county clerk in any county which has no auditor shall then audit all such claims and accounts. Thereafter he shall issue to the treasurer an order in favor of the person to whom the claim or account is payable to pay it.

(3) Upon presentation of the order by the person to whom it was issued, or his assignee, the treasurer shall pay it from the funds of the district.

History: En. Sec. 5-429, Ch. 197, L. 1965.

**32-3130. Estimates of work completed—payment therefor.** (1) The surveyor with the approval of the committee shall make estimates of the proportion of the work completed. After auditing, the estimates may be paid by the treasurer to an amount not exceeding eighty per cent (80 %) during the progress of the work.

(2) If the assessment is payable by installments, the treasurer shall pay the order only from such assessments as shall have been collected prior to the issue of the bonds and from the proceeds of the sales of the bonds after issue.

(3) If the board has ordered that the contractor shall receive bonds in payment, the order for payment shall call for bonds instead of money. The treasurer shall deliver the bonds, dating them the day he delivers them to the contractor. Interest shall run therefrom.

(4) Amounts collected on installment payments of assessments shall be reserved and disbursed by the treasurer for the payment of principal and interest and for the redemption of such bonds.

History: En. Sec. 5-430, Ch. 197, L. 1965.

**32-3131. Disposition of residue of funds.** (1) After the payment of the whole cost of construction or improvement, any money remaining in the county treasury which belongs to the district shall be refunded on demand. A rebate therefrom shall be made on demand to any person who shall not have paid his assessment in full.

(2) Demand shall be made within two (2) years from the date upon which the assessment became due.

(3) Any such money remaining in the county treasury after the expiration of two years for which no demand has been made shall go into the general funds.

History: En. Sec. 5-431, Ch. 197, L. 1965.

## CHAPTER 32—STATE VEHICLE FEES—PAYMENT, EXPIRATION AND DISPOSITION

Section 32-3201. Time for payment of fees.

32-3202. Expiration date.

32-3203. License is transferable.

32-3204. Disposition of fees collected by county treasurer.

32-3205. Deposit of state highway moneys.

32-3205.1. Blank forms furnished county treasurers.

32-3206. Additional tax by municipalities prohibited—exceptions.

32-3201. Time for payment of fees. (1) A person who owns or operates a vehicle subject to the fees provided in sections 32-3301 through 32-3308 and section 32-3310 shall pay the fees provided in this chapter.

(2) Prior to or at the time of registration of the vehicle as required under Title 53, or prior to the operation of the vehicle on the public highways, fees paid shall be the full amount provided in this chapter unless otherwise provided by law. With respect to vehicles operating on the highways with a current rear windshield sticker issued under the provisions of section 53-109.1 or section 53-109.2, the fees provided in this chapter shall be due and payable at the time of registration.

(3) A person who makes application for license after the first day of July of any year shall pay one-half ( $\frac{1}{2}$ ) of those fees.

**History:** En. Sec. 6-101, Ch. 197, L. 1965; amd. Sec. 1, Ch. 292, L. 1967; amd. Sec. 1, Ch. 47, L. 1973; amd. Sec. 109, Ch. 316, L. 1974.

person who owns a motor truck, truck-tractor, trailer, semitrailer, bus, or new passenger motor vehicle and operates it upon the highways of the state shall, at the time he makes application for license as provided in section 53-114, pay any additional fees prescribed in this chapter. A person who makes application for license after the first day of July of any year shall pay one-half ( $\frac{1}{2}$ ) of those fees."

### Compiler's Note

Chapters 32 to 35, inclusive, of this title were designated as Chapter 6 of the Highway Code, entitled "State Finance." This chapter was designated as Part 1 of Chapter 6, entitled "Fees: Time for Payment, Expiration, Disposition."

The 1973 amendment added the second sentence to the second paragraph.

The 1974 amendment made minor changes in phraseology, punctuation and style.

### Amendments

The 1967 amendment rewrote this section. Prior to amendment, it read, "A

32-3202. Expiration date. The fees paid hereunder for every motor truck, truck-tractor, trailer, semitrailer, bus or automobile shall expire on December 31 of each year. Any certificate, registration, or license issued shall be valid only for the period for which issued.

**History:** En. Sec. 6-102, Ch. 197, L. 1965.

32-3203. License is transferable. The certificate, registration or license issued hereunder is transferable by the licensee to another truck, truck-tractor, trailer, semitrailer, low-boy trailer, pole trailer, housetrailer, or passenger car upon transfer of ownership of such truck, truck-tractor, trailer, semitrailer, low-boy trailer, pole trailer, housetrailer, or passenger car to a replacement vehicle of the same type. If a smaller vehicle is purchased, there shall be no refund.

**History:** En. Sec. 6-103, Ch. 197, L. 1965; amd. Sec. 4, Ch. 127, L. 1969.

### Amendments

The 1969 amendment substituted "by

the licensee \* \* \* of the same type" for "only upon transfer of title or interest of the legal owner" at the end of the first sentence and deleted second and third sentences reading: "It is not transferable

to another vehicle. However, if a vehicle is destroyed from any cause, the commission may permit transfer to a replacement vehicle."

**32-3204. Disposition of fees collected by county treasure..** At the time of collecting the fees provided for in section 32-3201, each county treasurer shall retain five per cent (5%) of the fees collected by him for the cost of administration, and for deposit in the general fund of the county. The remaining ninety-five per cent (95%) shall be remitted monthly to the state treasurer for deposit to the credit of the department of highways. The remittance shall be made on forms furnished to the county treasurer by the department.

History: En. Sec. 6-104, Ch. 197, L. 1965; amd. Sec. 1, Ch. 293, L. 1967; amd. Sec. 110, Ch. 316, L. 1974.

#### Amendments

The 1967 amendment rewrote the first sentence of this section. Prior to amendment, it read, "At the time of collecting the fees hereinafter provided for, each county treasurer shall retain five per cent (5%) of the fees so collected for the cost of administration."

The 1974 amendment substituted "de-

partment of highways" and "department" for "commission"; and made minor changes in phraseology and style.

#### Separability Clause

Section 2 of Ch. 293, Laws 1967 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

**32-3205. Deposit of state highway moneys.** (1) Any reference to the state highway fund shall be taken to mean the state highway account in the earmarked revenue fund.

(2) Moneys received for the use of the department from the receipt or transfer of motor vehicle license fees, as provided by law, or from other state sources shall be deposited in the earmarked revenue fund to the credit of the department.

(3) Moneys received from the counties and from the federal government or other agencies shall be deposited in the federal and private revenue fund to the credit of the department.

(4) Hereafter, moneys collected for the department as authorized by law shall be credited to such fund or funds by the state treasurer.

History: En. Sec. 6-105, Ch. 197, L. 1965; amd. Sec. 111, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "commission" throughout the section; and made minor changes in phraseology.

**32-3205.1. Blank forms furnished county treasurers.** The department shall furnish all county treasurers with the following:

1. Blank application forms and affidavit forms outlining and providing for the information needed in each classification of registration required.

2. Registration, license or certificates in a form determined most suitable by the department.



3. The other forms, stickers, certificates or blanks the department considers necessary to carry out chapters 32 and 33 of this title.

History: En. Sec. 6, Ch. 219, L. 1951; Sec. 53-620, R. C. M. 1947; amd. and redes. 32-3205.1 by Sec. 181, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment renumbered this

section; substituted references to "department" for references to "state highway commission"; substituted "chapters 32 and 33 of this title" for "the provisions of this act" in subdivision 3; and made minor changes in phraseology.

**32-3206. Additional tax by municipalities prohibited—exceptions.** Municipalities shall not levy, assess, collect, or charge any additional tax upon any carrier of persons or property for hire, except as provided by law. However, no carrier shall be exempt hereby from paying a parking, curb or ad valorem property tax levied by any municipality.

History: En. Sec. 6-106, Ch. 197, L. 1965.

**CHAPTER 33—ADDITIONAL TRUCK, TRAILER AND BUS FEES—SALES TAX ON VEHICLES—EXCESS WEIGHT PENALTIES**

- Section 32-3301. Additional fees on motor trucks and truck-tractors.  
 32-3302. Additional fees on trailers and semitrailers.  
 32-3302.1. Alternative additional fees on truck-trailer combinations.  
 32-3303. Additional fees—gross weight over 42,000 pounds.  
 32-3304. Additional fees—pole trailers, low-boys, and livestock.  
 32-3304.1. Additional fees—haulers of ready-mix concrete.  
 32-3305. Additional fees—house trailers.  
 32-3306. Additional fees—certain farm vehicles.  
 32-3307. Additional fees—buses.  
 32-3308. Additional fees—quarterly payment.  
 32-3309. Failure to pay additional fees—penalty.  
 32-3310. Three-unit combination—fees in lieu of gross weight fees otherwise provided—marking.  
 32-3312. Additional fees on motor trucks, truck-tractors, trailers and semi-trailers from other states.  
 32-3313. Temporary trip permits showing payment of fees—display.  
 32-3314. Time for payment of fees by nonresidents.  
 32-3315. Sales tax on new motor vehicles.  
 32-3315.1. Demonstration of trucks and trailers authorized—dealer's plate to be used.  
 32-3315.2. Application for truck demonstration permit—form and contents—number of permits authorized.  
 32-3315.3. Operation under truck demonstration permit—period of permit—rental under permit prohibited.  
 32-3315.4. Violation of truck demonstration provisions.  
 32-3315.5. Disposition of truck demonstration fees.  
 32-3316. Violation—penalty.  
 32-3317. Excess weight—penalties.  
 32-3318. Enforcement.  
 32-3319. Exemptions.  
 32-3320. Purpose of fees.

**32-3301. Additional fees on motor trucks and truck-tractors.** In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each motor truck and truck-tractor, based upon the maximum gross loaded weight thereof as set by the licensee in his application, the following fees:

## Schedule I

Up to 6,000 lbs. -----	\$ 7.50
6,001 lbs. or more, and less than 8,000 lbs. -----	12.50
8,001 lbs. or more, and less than 10,000 lbs. -----	17.50
10,001 lbs. or more, and less than 12,000 lbs. -----	20.00
12,001 lbs. or more, and less than 14,000 lbs. -----	22.50
14,001 lbs. or more, and less than 16,000 lbs. -----	27.50
16,001 lbs. or more, and less than 18,000 lbs. -----	37.50
18,001 lbs. or more, and less than 20,000 lbs. -----	50.00
20,001 lbs. or more, and less than 22,000 lbs. -----	62.50
22,001 lbs. or more, and less than 24,000 lbs. -----	93.75
24,001 lbs. or more, and less than 26,000 lbs. -----	125.00
26,001 lbs. or more, and less than 28,000 lbs. -----	156.25
28,001 lbs. or more, and less than 30,000 lbs. -----	206.25
30,001 lbs. or more, and less than 32,000 lbs. -----	262.50
32,001 lbs. or more, and less than 34,000 lbs. -----	318.75
34,001 lbs. or more, and less than 36,000 lbs. -----	375.00
36,001 lbs. or more, and less than 38,000 lbs. -----	431.25
38,001 lbs. or more, and less than 40,000 lbs. -----	487.50
40,001 lbs. or more, and less than 42,000 lbs. -----	543.75

History: En. Sec. 6-201, Ch. 197, L. 1965; amd. Sec. 2, Ch. 2, Ex. L. 1967.

## Compiler's Note

This chapter was designated as Part 2 of Chapter 6 of the Highway Code, entitled "Additional Fees, Sales Tax, and Penalty."

## Amendments

The 1967 amendment increased the fees under this section where applicable from \$6 to \$7.50; 10 to 12.50; 14 to 17.50; 16 to 20.00; 18 to 22.50; 22 to 27.50; 30 to 37.50; 40 to 50.00; 50 to 62.50; 75 to 93.75; 100 to 125.00; 125 to 156.25; 165 to 206.25; 210 to 262.50; 255 to 318.75; 300 to 375.00; 345 to 431.25; 390 to 487.50; and 435 to 543.75.

**32-3302. Additional fees on trailers and semitrailers.** In addition to other fees for the licensing of vehicles there shall be paid and collected annually for each trailer and semitrailer, based upon the maximum gross loaded weight thereof as set by the licensee in his application, except as otherwise provided, the following fees:

## Schedule II

## Trailers Other Than House Trailers.

Up to 2,500 lbs. for personal use—Exempt	
Up to 2,500 lbs. for commercial use -----	\$3.75
2,501 lbs. or more, and less than 6,000 lbs. -----	5.00
6,001 lbs. or more, and less than 8,000 lbs. -----	15.00
8,001 lbs. or more, and less than 10,000 lbs. -----	17.50
10,001 lbs. or more, and less than 12,000 lbs. -----	20.00
12,001 lbs. or more, and less than 14,000 lbs. -----	22.50
14,001 lbs. or more, and less than 16,000 lbs. -----	27.50
16,001 lbs. or more, and less than 18,000 lbs. -----	37.50
18,001 lbs. or more, and less than 20,000 lbs. -----	50.00
20,001 lbs. or more, and less than 22,000 lbs. -----	62.50
22,001 lbs. or more, and less than 24,000 lbs. -----	93.75
24,001 lbs. or more, and less than 26,000 lbs. -----	125.00

# ADDITIONAL TRUCK, TRAILER AND BUS FEES

32-3302.1

26,001 lbs. or more, and less than 28,000 lbs. -----	156.25
28,001 lbs. or more, and less than 30,000 lbs. -----	206.25
30,001 lbs. or more, and less than 32,000 lbs. -----	262.50
32,001 lbs. or more, and less than 34,000 lbs. -----	318.75
34,001 lbs. or more, and less than 36,000 lbs. -----	375.00
36,001 lbs. or more, and less than 38,000 lbs. -----	431.25
38,001 lbs. or more, and less than 40,000 lbs. -----	487.50
40,001 lbs. or more, and less than 42,000 lbs. -----	543.75

History: En. Sec. 6-202, Ch. 197, L. 1965; amd. Sec. 3, Ch. 2, Ex. L. 1967.

## Amendments

The 1967 amendment increased the fees under this section where applicable from 3 to 3.75; 4 to 5.00; 12 to 15.00; 14

to 17.50; 16 to 20.00; 18 to 22.50; 22 to 27.50; 30 to 37.50; 40 to 50.00; 50 to 62.50; 75 to 93.75; 100 to 125.00; 125 to 156.25; 165 to 206.25; 210 to 262.50; 255 to 318.75; 300 to 375.00; 345 to 431.25; 390 to 487.50; and 435 to 543.75.

## 32-3302.1. Alternative additional fees on truck-trailer combinations.

(1) In addition to other fees for the licensing of vehicles, there may be paid and collected annually instead of the fees provided in section 32-3301, for each motor truck or truck-tractor, based upon the maximum combined gross loaded weight of a truck-tractor with a semitrailer, a truck-tractor with a semitrailer and a full trailer, a motor truck and a trailer, or a motor truck and trailers, as set by the licensee in his application, the following fees:

## Schedule III

Truck-tractor with a semitrailer, a truck-tractor with a semitrailer and a full trailer, a motor truck and a trailer, or a motor truck and trailers:

Up to 42,000 lbs. -----	\$ 571.00
42,001 to 44,000 lbs. -----	631.00
44,001 to 46,000 lbs. -----	691.00
46,001 to 48,000 lbs. -----	752.00
48,001 to 50,000 lbs. -----	812.00
50,001 to 52,000 lbs. -----	871.00
52,001 to 54,000 lbs. -----	931.00
54,001 to 56,000 lbs. -----	992.00
56,001 to 58,000 lbs. -----	1,052.00
58,001 to 60,000 lbs. -----	1,112.00
60,001 to 62,000 lbs. -----	1,172.00
62,001 to 64,000 lbs. -----	1,233.00
64,001 to 66,000 lbs. -----	1,293.00
66,001 to 68,000 lbs. -----	1,352.00
68,001 to 70,000 lbs. -----	1,412.00
70,001 to 72,000 lbs. -----	1,473.00
72,001 to 74,000 lbs. -----	1,533.00
74,001 to 76,000 lbs. -----	1,593.00
76,001 to 78,000 lbs. -----	1,653.00
78,001 and over -----	65.50

per ton or fraction thereof.



(2) Payment of the fees provided in this section exempts a semi-trailer or trailer in combination with a motor truck or truck-tractor so licensed from the fees provided in sections 32-3302, 32-3310, 32-3312, and 53-129.

(3) The trailers or semitrailers must be currently registered in another state or county.

(4) A trailer or semitrailer entering the state in combination with a truck or truck-tractor licensed under the above schedule may be moved in the local delivery zone in combination with a truck, truck-tractor, licensed under section 32-3301, without payment of any additional fees on the truck or truck-tractor, trailer or semitrailer.

(5) A permit must be obtained from the department of highways before the truck-tractor is used in local service and the permit is continuous and issued at no fee. The permit shall not be issued until proof of payment of fees under Schedule III has been established.

**History:** En. Sec. 7, Ch. 2, Ex. L. 1967; amd. Sec. 1, Ch. 212, L. 1971; amd. Sec. 112, Ch. 316, L. 1974.

#### Title of Act

An act amending section 32-1123, R. C. M. 1947, relating to maximum dimensions, weights and other characteristics and factors of vehicles, providing that limitations shall not exceed those for the federal interstate highway system until federal law permits states to exceed same; amending sections 32-3301, 32-3302, 32-3303, 32-3305 and 32-3306, R. C. M. 1947, enacted as sections 6-201, 6-202, 6-203 and 6-205, chapter 197, Laws of 1965, relating to additional fees on motor trucks, truck-tractors, trailers, semitrailers and house trailers and increasing the fees; providing that additional fees for each motor truck or truck-tractor, based upon maximum gross loaded weight

of combinations with trailers and semitrailers, may be paid instead of additional fees provided for in sections 32-3301 and 32-3302, R. C. M. 1947, and allowing for exemptions; and providing an effective date.

#### Amendments

The 1971 amendment added the reference to section 53-129 at the end of the first paragraph after the schedule; and added the final three paragraphs.

The 1974 amendment substituted "department of highways" for "state highway commission" in subsection (5); and made minor changes in phraseology and style.

#### Effective Date

Section 8 of Ch. 2, Ex. Laws 1967 read "This act is effective January 1, 1968."

**32-3303. Additional fees—gross weight over 42,000 pounds.** In addition to the fees provided for in sections 32-3301 and 32-3302, for each motor truck, truck-tractor, trailer, or semitrailer having a gross loaded weight in excess of forty-two thousand (42,000) pounds and within the weight limits specified in sections 32-1123.1 through 32-1123.11, there shall be paid and collected annually a fee of sixty-two dollars and fifty cents (\$62.50) for each two thousand (2,000) pounds, or fraction thereof.

**History:** En. Sec. 6-203, Ch. 197, L. 1965; amd. Sec. 4, Ch. 2, Ex. L. 1967; amd. Sec. 113, Ch. 316, L. 1974.

#### Amendments

The 1967 amendment substituted "32-

3301 and 32-3302" for "6-201 and 6-202"; and increased the annual fee paid under this section from \$50 to \$62.50.

The 1974 amendment substituted reference to "sections 32-1123.1 through 32-1123.11" for reference to "section 32-1123."

**32-3304. Additional fees—pole trailers, low-boys, and livestock.** There shall be paid and collected annually a fee equal to seventy-five per cent (75%) of the fees provided in Schedule I and Schedule II above on pole trailers; trucks, truck-tractors, trailers and semitrailers

used exclusively in hauling livestock and logs; truck-tractors and low-boy trailers used exclusively in hauling equipment; and truck-tractors drawing or hauling said low-boy trailers.

**History:** En. Sec. 6-204, Ch. 197, L. 1965; amd. Sec. 1, Ch. 187, L. 1969.

**Amendments**

The 1969 amendment deleted reference to equipment used in hauling ready-mix concrete.

**32-3304.1. Additional fees—haulers of ready-mix concrete.** There shall be paid and collected annually a fee equal to fifty-five per cent (55%) of the fees provided in Schedule I and Schedule II, as provided in section 32-3301 and 32-3302, R. C. M. 1947, on concrete mixer trucks, concrete mixer trailers and concrete mixer semitrailers used exclusively for hauling ready-mix or ready-to-pour concrete and truck-tractors used exclusively in hauling concrete mixer semitrailers.

**History:** En. 32-3304.1 by Sec. 2, Ch. 187, L. 1969; amd. Sec. 1, Ch. 102, L. 1971.

Schedules I and II contained in sections 32-3301 and 32-3302.

**Title of Act**

An act to amend section 32-3304, R. C. M. 1947, as amended by chapter 197, Laws of 1965, by striking therefrom reference to equipment used in hauling ready-mix concrete; and providing for a new section to be numbered 32-3304.1, providing for the annual payment and collection on trucks, truck-tractors, trailers and semitrailers used exclusively in hauling ready-mix concrete of a fee equal to fifty-five per cent (55%) of the fees provided in

**Amendments**

The 1971 amendment made a minor change in style and substituted "concrete mixer trucks, concrete mixer trailers and concrete mixer semitrailers used exclusively for hauling ready-mix or ready-to-pour concrete and truck tractors used exclusively in hauling concrete mixer semitrailers" at the end of the section for "trucks, truck-tractors, trailers and semitrailers used exclusively in hauling ready-mix concrete."

**32-3305. Additional fees—house trailers.** In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each house trailer, based upon over-all length of body as set by the licensee in his application, except as otherwise provided, a fee equal to seventy-five cents (\$.75) for each foot of over-all trailer body length exclusive of bumpers and hitch.

**History:** En. Sec. 6-205, Ch. 197, L. 1965; amd. Sec. 5, Ch. 2, Ex. L. 1967.

**Amendments**

The 1967 amendment increased the fee under this section from 50¢ to 75¢.

**32-3306. Additional fees—certain farm vehicles.** Except for motor trucks owned and operated by co-operative associations or co-operative marketing associations, there shall be paid and collected annually a fee equal to sixteen per cent (16%) of the fees provided in Schedule I and Schedule II above on motor trucks, trailers and semitrailers, owned and operated by ranchers or farmers in the transportation of their own ranch, farm, orchard, or dairy products from point of production to market, or of supplies, commodities or equipment to be used on the ranch, farm, orchard, or dairy, or in the infrequent or seasonal transportation by one farmer for another for any purpose other than commercial hire of products of the farm, orchard or dairy, or of supplies or commodities to be used on the farm, orchard or dairy, and on one truck tractor and lowboy trailer used by contractors engaged exclusively in soil conservation work and land

leveling activities that result in direct benefit to agriculture. However, the minimum fee so paid shall be six dollars (\$6). The terms "trailers and semitrailers" as used herein shall not include farm wagons.

**History:** En. Sec. 6-206, Ch. 197, L. 1965; amd. Sec. 1, Ch. 143, L. 1967; amd. Sec. 6, Ch. 2, Ex. L. 1967.

bodying the amendment made by both 1967 acts.

#### Compiler's Notes

This section was amended twice in 1967, once by Ch. 143 and once by Ch. 2 (Ex. Sess.). Neither amendatory act referred to or incorporated the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section em-

#### Amendments

Chapter 143, Laws of 1967, inserted "and on one truck tractor \* \* \* in direct benefit to agriculture" after "orchard or dairy"; and increased the minimum fee to be paid by farm vehicles from \$4 to \$6.

Chapter 2 (Ex. Sess.), Laws of 1967, decreased the percentage of the fee equal to fees provided in Schedule I under this section from 20 to 16 per cent; and increased the minimum fee from \$4 to \$6.

**32-3307. Additional fees—buses.** There shall be paid and collected annually for each bus or auto stage with the exception of school buses a fee of seven dollars (\$7) per seat, exclusive of the first seven (7) seats and the operator, for the maximum adult seating capacity thereof, except that motor vehicles which are regularly used to haul freight and passengers shall be taxed upon the basis of the gross weight schedule established in section 6-201 [32-3301]. School buses shall not be exempt if they enter charter service.

**History:** En. Sec. 6-207, Ch. 197, L. 1965.

**32-3308. Additional fees—quarterly payment.** When the gross weight of a vehicle exceeds twenty-four thousand (24,000) pounds, the additional fees for motor trucks, trailers, tractors, pole trailers, or semitrailers may be purchased for a three months' period for one-fourth ( $\frac{1}{4}$ ) the regular fee at the beginning of any quarter of the calendar year. For each fee so paid other than at the time of payment of the basic license fee, an additional fee of one dollar (\$1) shall be charged. The department may adopt rules relative to the issuance and display of certificates or insignia, which shall state the quarters for which the vehicle is licensed.

**History:** En. Sec. 6-208, Ch. 197, L. 1965; amd. Sec. 114, Ch. 316, L. 1974.

partment" for "commission" in the last sentence; and made minor changes in phraseology.

#### Amendments

The 1974 amendment substituted "de-

**32-3309. Failure to pay additional fees—penalty.** A vehicle licensed under section 32-3308 may not be operated over the public highways unless the owner or operator of the vehicle, within ten (10) calendar days or seven (7) business days as provided by law, whichever is greater, after the expiration of the three-month period, pays the required fee for a license for an additional three-month period, or for the remainder of the year. A person who operates a vehicle upon the public highways after the expiration of the ten (10) calendar days or seven (7) business days as provided by law, whichever is greater, is guilty of a misdemeanor.



In addition he shall be required to purchase a gross weight license for the vehicle involved at the fee covering an entire year's license for operation of the vehicle, less the fees for a period of the year already paid. If, within five (5) days thereafter, no license for a full year has been purchased as required, the Montana highway patrol, county sheriff or city police may impound the vehicle in the manner which is directed for these cases by the highway patrol chief until the requirement is met.

**History:** En. Sec. 6-209, Ch. 197, L. 1965; amd. Sec. 2, Ch. 292, L. 1967; amd. Sec. 115, Ch. 316, L. 1974.

**Amendments**

The 1967 amendment substituted "ten (10) calendar days or seven (7) business days as provided by law, whichever is greater" for "ten (10) days" wherever

found in this section; and substituted "may" for "shall" after "city police" in the last sentence.

The 1974 amendment substituted "highway patrol chief" for "supervisor of the Montana highway patrol" in the last sentence; and made minor changes in phraseology.

**32-3310. Three-unit combination—fees in lieu of gross weight fees otherwise provided—marking.** (1) Instead of the gross weight fees provided in sections 32-3301 through 32-3308, the owner of a motor truck or truck-tractor used on the highways of the state in connection with two (2) trailers or semitrailers at the same time shall register them as a three (3) unit combination in the following manner:

(a) By paying the registration and other fees covering the maximum practical gross vehicle weight for the truck or truck-tractor, but not less than the actual operating gross weight under sections 53-114, 53-122, 32-3301 and 32-3303.

(b) By registering the trailers in accordance with sections 53-114 and 53-122, and by paying the gross vehicle weight fee prescribed for the maximum trailing load in accordance with sections 32-3302 and 32-3303 on the combined gross weight of the two (2) trailers or semitrailers, treating them as if they were a single unit.

(2) This section does not authorize axle loads in excess to those established by sections 32-1123.1 through 32-1123.11.

**History:** En. Sec. 6-210, Ch. 197, L. 1965; amd. Sec. 116, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment substituted reference to "section 53-122" in subdivision (1)(b) for reference to section 53-112; deleted a former subsection (2) which read "Vehicles on which fees are paid in ac-

cordance with this section shall have marked thereon the gross weight for which fees have been paid, and shall bear a distinctive mark designated by the commission"; substituted reference to sections 32-1123.1 through 32-1123.11 in subsection (2) for reference to 32-1123; and made minor changes in phraseology and punctuation.

**32-3311. Repealed.**

**Repeal**

Section 32-3311 (Sec. 6-211, Ch. 197, L. 1965), relating to markings of weight or

capacity on trucks, truck-tractors and buses, was repealed by Sec. 2, Ch. 37, Laws 1971.

**32-3312. Additional fees on motor trucks, truck-tractors, trailers and semitrailers from other states.** (1) In lieu of other fees for the licensing

of vehicles, there shall be collected a fee for each motor truck, truck-tractor, trailer, and semitrailer already licensed for the year in another jurisdiction and operated upon an itinerant basis in this state. The fee shall be collected upon each entrance of such vehicle into the state, and shall be based upon the number of miles to be traveled in the state as shown in the application of the nonresident operator.

(2) The fee shall be collected for any single vehicle. When any combination of truck, truck-tractor, semitrailer, or trailer totals more than six thousand (6,000) pounds gross weight, the fee shall be collected for each unit in the combination.

(3) The fee shall be:

(a) Five dollars (\$5) for each trip of two hundred (200) miles or less.

(b) Seven dollars and fifty cents (\$7.50) for each trip of over two hundred (200) miles to four hundred (400) miles.

(c) Ten dollars (\$10) for each trip of over four hundred (400) miles.

(4) Such fees shall not apply to any trailer the principal use of which is as temporary or permanent living quarters, or to any vehicle of a carnival which is under contract with a state, county, or district fair association.

**History:** En. Sec. 6-212, Ch. 197, L. 1965.

### 32-3313. Temporary trip permits showing payment of fees—display.

(1) Temporary trip permits showing payment of the fees provided for in section 32-3312 shall be issued under rules prescribed by the department. The permit shall be displayed in the vehicle for which the fee has been paid at all times while the vehicle is being operated on the highways of this state by posting it where it may be read.

(2) The department may limit the operation of the vehicle in this state to a definite period of time.

**History:** En. Sec. 6-213, Ch. 197, L. 1965; amd. Sec. 117, Ch. 316, L. 1974. department" for "commission" in two places; and made minor changes in phraseology.

#### Amendments

The 1974 amendment substituted "de-

**32-3314. Time for payment of fees by nonresidents.** A nonresident owner or operator of a motor truck, truck-tractor, trailer or semitrailer shall, immediately upon arrival in the state, contact the nearest highway patrol office, any department office, the county sheriff, or the county treasurer's office to pay the fee and secure the permit prescribed. All fees collected shall immediately be remitted to the county treasurer.

**History:** En. Sec. 6-214, Ch. 197, L. 1965; amd. Sec. 118, Ch. 316, L. 1974. department office" for "any commission office."

#### Amendments

The 1974 amendment substituted "any

#### Cross-References

Highway patrol functions transferred, sec. 82A-1206.

**32-3315. Sales tax on new motor vehicles.** (1) In consideration of the right to use the highways of the state, there shall be imposed a tax upon all sales of new motor vehicles for which a license is sought and

an original application for title is made. The word motor vehicle as used in this section means automobiles, auto trucks and motorcycles, propelled by their own power, used upon the public highways of the state. The tax shall be paid by the purchaser when he applies for his original Montana license through the county treasurer.

(2) The sales tax shall be:

(a) One and one-half per cent ( $1\frac{1}{2}\%$ ) of the F.O.B. factory list price or F.O.B. port of entry list price, during the first quarter of the year.

(b) One and one-eighth per cent ( $1\frac{1}{8}\%$ ) of the list price during the second quarter of the year.

(c) Three-fourths ( $\frac{3}{4}$ ) of one per cent (1%) during the third quarter of the year.

(d) Three-eighths ( $\frac{3}{8}$ ) of one per cent (1%) during the fourth quarter of the year.

(3) If the manufacturer or importer fails to furnish the F.O.B. factory list price or F.O.B. port of entry list price, the department may use published price lists.

(4) The proceeds from this tax shall be remitted to the state treasurer every thirty (30) days for credit to the state highway account of the earmarked revenue fund.

(5) The new vehicle is not subject to any other assessment or taxation during the calendar year in which the original application for title is made.

History: En. Sec. 6-215, Ch. 197, L. 1965; amd. Sec. 5, Ch. 290, L. 1967; amd. Sec. 119, Ch. 316, L. 1974.

#### Amendments

The 1967 amendment, in subsection (1), deleted "passenger" before "motor vehicles" and added the present second sentence; substituted "earmarked revenue fund of the state highway account" for "commission" at the end of subsection (4); deleted "whether or not it is in the state on the first day of January of that year" at the end of subsection (5); and deleted subsection (6), which read, "The tax herein imposed shall not apply to any motor vehicle assessed pursuant to the provisions of section 84-406."

The 1974 amendment substituted "department" in subsection (3) for "highway

commission"; substituted "state highway account of the earmarked revenue fund" in subsection (4) for "earmarked revenue fund of the state highway account"; and made minor changes in phraseology.

#### Repealing Clause

Section 6 of Ch. 290, Laws 1967 read "That section 84-6009, Revised Codes of Montana, 1947, is repealed."

#### Effective Date

Section 7 of Ch. 290, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

#### References

Swartz v. Berg, 147 M 178, 411 P 2d 736.

**32-3315.1. Demonstration of trucks and trailers authorized—dealer's plate to be used.** A new or used truck or trailer dealer licensed under section 53-118 may not demonstrate to a prospective purchaser a truck, truck tractor, trailer or semitrailer, owned by or consigned to the dealer, or otherwise controlled by the dealer, without securing a demonstration permit and paying the fees required in section 32-3315.2. The vehicle must display the dealer's registration plate or other current Montana registration and the demonstration permit.

History: En. Sec. 1, Ch. 209, L. 1971; redes. 32-3315.1 by Sec. 168, Ch. 316, L. Sec. 53-118.6, R. C. M. 1947; amd. and 1974.



**Title of Act**

An act requiring a licensed truck or trailer dealer to secure a demonstration permit for purposes of demonstration only, affixing the fees and terms of said permits, affixing a penalty and repealing sections 53-118.1, 53-118.2, 53-118.3, 53-118.4 and 53-118.5, R. C. M. 1947, enacted as section 2, Chapter 36, Laws of 1965.

**Amendments**

The 1974 amendment renumbered this

section; substituted "without securing a demonstration permit and paying the fees required in section 32-3315.2" in the first sentence for "by payment of the fees required in this section"; substituted the second sentence for "provided the vehicle displays the dealer's registration plate or other current Montana registration and the demonstration permit provided in Title 32, chapter 33, R. C. M. 1947, chapter 197, Laws of 1965"; and made minor changes in phraseology and punctuation.

**32-3315.2. Application for truck demonstration permit—form and contents—number of permits authorized.** The licensed dealer shall obtain the demonstration permit upon application to the department and the payment of eight dollars (\$8) for each permit; the payment of this fee is in lieu of fees required under this chapter. The form of the permit and the application for it shall be provided by the department under rules it prescribes. The permit shall be designed so that the licensed dealer may fill in the necessary information on it and so that the permit will be validated by the dating, inserting of name and address of the prospective purchaser, and affixing thereto the signature of the licensed dealer. The licensed dealer may obtain more than one (1) but not more than five (5) demonstration permits with each application.

**History:** En. Sec. 2, Ch. 209, L. 1971; Sec. 53-118.7, R. C. M. 1947; amd. and redes. 32-3315.2 by Sec. 169, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment renumbered this section; substituted references to department for references to the state highway commission; and made minor changes in phraseology.

**32-3315.3. Operation under truck demonstration permit—period of permit—rental under permit prohibited.** (1) A vehicle displaying the permit may be operated either laden or unladen. The permit expires seven (7) days after the date of validation by the licensed dealer.

(2) A demonstration permit may not be issued to the same prospective purchaser for the demonstration of the same vehicle or vehicles for more than one (1) seven (7) day period.

(3) The vehicle operating with the demonstration permit may not be leased or rented by the licensed dealer or operated for compensation by the licensed dealer.

**History:** En. Sec. 3, Ch. 209, L. 1971; Sec. 53-118.8, R. C. M. 1947; amd. and redes. 32-3315.3 by Sec. 170, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment renumbered this section; and made minor changes in phraseology and style.

**32-3315.4. Violation of truck demonstration provisions.** Violation of sections 32-3315.1 through 32-3315.3 is a misdemeanor and subject to the penalties under section 32-3316. For the purposes of this section, a licensed dealer shall be considered the owner.

**History:** En. Sec. 4, Ch. 209, L. 1971; Sec. 53-118.9, R. C. M. 1947; amd. and redes. 32-3315.4 by Sec. 171, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment renumbered this section; substituted "sections 32-3315.1 through 32-3315.3" for "any provision of this section"; and made minor changes in phraseology.

**32-3315.5. Disposition of truck demonstration fees.** Fees collected under section 32-3315.2 shall be disposed of in the manner provided in section 32-3204.

**History:** En. Sec. 5, Ch. 209, L. 1971; Sec. 53-118.10, R. C. M. 1947; amd. and redes. 32-3315.5 by Sec. 172, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; substituted "under section 32-

3315.2" for "under this section"; and made a minor change in style.

#### Repealing Clause

Section 6 of Ch. 209, Laws 1971 read "Sections 53-118.1, 53-118.2, 53-118.3, 53-118.4 and 53-118.5, R. C. M. 1947, enacted as in section 2, Ch. 36, Laws of 1965, are hereby repealed."

**32-3316. Violation—penalty.** Any owner or operator of a motor truck, truck-tractor, trailer, semitrailer, bus or automobile who violates any provision of this part [chapter] is guilty of a misdemeanor and shall be punished by a fine of not more than three hundred dollars (\$300), or by a sentence of not more than sixty (60) days in the county jail, or both.

**History:** En. Sec. 6-216, Ch. 197, L. 1965.

**32-3317. Excess weight—penalties.** (1) The operator is subject to the penalties stated in this section whenever the gross laden weight of any motor truck, truck-tractor, trailer, or semitrailer operated upon any highway in this state exceeds:

(a) The gross vehicle weight shown on the owner's certificate of registration and tax receipt issued under section 53-107, or

(b) The gross vehicle weight shown on the gross vehicle weight receipt issued under section 32-3205.1.

(2) The operator shall:

Immediately thereafter pay to the nearest county treasurer or to the department the difference between the fee already paid and that applicable to the gross weight of his vehicle before unloading the excess, provided that it does not exceed the legal axle weight.

**History:** En. Sec. 6-217, Ch. 197, L. 1965; amd. Sec. 1, Ch. 37, L. 1971; amd. Sec. 120, Ch. 316, L. 1974.

#### Amendments

The 1971 amendment deleted former paragraph (a) of subsection (1); redesignated former paragraphs (b) and (c) of subsection (1) as (a) and (b) respectively; deleted former paragraphs (a) and (c) of subsection (2); inserted "or state highway commission" after "nearest county treasurer" in former paragraph (b), now

the sole paragraph of subsection (2); and deleted former subsection (3).

The 1974 amendment substituted "section 32-3205.1" in subdivision (1)(b) for "section 53-620"; substituted "department" in subsection (2) for "state highway commission"; and made minor changes in phraseology.

#### Repealing Clause

Section 2 of Ch. 37, Laws 1971 read "Section 32-3311, R. C. M., 1947, is repealed."

**32-3318. Enforcement.** The highway patrol, and any designated employee of the department of highways, shall enforce chapters 32 and 33 of this title, and those persons shall examine and inspect the motor vehicles operating upon the highways in this state, and regulated by those chapters, to ascertain whether or not those chapters are being complied with.

**History:** En. Sec. 10, Ch. 219, L. 1951; R. C. M. 1947; amd. and redes. 32-3318 amd. Sec. 1, Ch. 156, L. 1955; Sec. 53-624, by Sec. 182, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment renumbered this section; substituted "department of highways" for "state highway commission"; substituted "chapters 32 and 33 of this title" for "the provisions of this act"; sub-

stituted "motor vehicles" for "trucks, trailers and semitrailers, buses, or automobiles"; inserted "and regulated by those chapters"; and made minor changes in phraseology, punctuation and style.

**32-3319. Exemptions.** Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within fifteen (15) miles from such limits are exempt from chapters 32 and 33 of this title; motor vehicles brought or driven into Montana by a nonresident migratory bona fide agricultural worker temporarily employed in agricultural work in this state where those motor vehicles are used exclusively for transportation of agricultural workers are also exempt from those chapters. Vehicles lawfully displaying a licensed dealer's plate as provided in section 53-122 are exempt from those chapters when moving to or from a dealer's place of business when unladen or laden with dealer's property only, and, in the case of vehicles having a gross laden weight of less than twenty-four thousand (24,000) pounds, while in the process of demonstration in the course of the dealer's business.

**History:** En. Sec. 12, Ch. 219, L. 1951; amd. Sec. 1, Ch. 262, L. 1967; amd. Sec. 1, Ch. 46, L. 1973; Sec. 53-626, R. C. M. 1947; amd. and redes. 32-3319 by Sec. 183, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment renumbered this section; substituted "chapters 32 and 33 of this title" and "those chapters" for "the provisions of this act"; and made minor changes in phraseology and style.

**32-3320. Purpose of fees.** The fees provided in chapters 32 and 33 of this title are in consideration of the right to use the highways of the state of Montana.

**History:** En. Sec. 13, Ch. 219, L. 1951; Sec. 53-627, R. C. M. 1947; amd. and redes. 32-3320 by Sec. 184, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment renumbered this section; substituted "in chapters 32 and 33 of this title" for "in this act"; and deleted a final clause making the act effective January 1, 1952.

## CHAPTER 34—FEES FOR DRIVE-AWAY OR TOW-AWAY TRANSPORTERS

- Section 32-3401. Permit and transit plates for new vehicles being transported by drive-away or tow-away methods.
- 32-3402. One-trip fee in addition to permit and plate fees, payable quarterly.
- 32-3403. Disposition of funds collected.
- 32-3404. Fees provided for are in addition to fees now payable under Title 8, Chapter 1.
- 32-3405. Fees provided are in lieu of other fees payable—election to pay other fees.
- 32-3406. Exemptions from fees.
- 32-3407. Display of plates.
- 32-3408. List of holders of permits and transit plates to be furnished department of highways by department of justice.

**32-3401. Permit and transit plates for new vehicles being transported by drive-away or tow-away methods.** (1) A person, firm, partnership



or corporation, regularly and lawfully engaged in the transportation of new vehicles over the highways of this state from manufacturing or assembly points to agents of manufacturers and dealers in this state or in other states, territories, foreign countries or provinces, by the drive-away or tow-away methods, where the vehicles being driven, towed or transported by the saddle-mount, tow-bar or full-mount methods, or a lawful combination of these methods, will be transported over the highways of the state but once, may annually apply to the department of justice for a permit to use the highways of this state, and shall pay, upon filing the application, a fee of one hundred dollars (\$100). Upon processing of the application, that department shall issue an annual permit to the applicant.

(2) The permit holder may also apply to the department of justice for a sufficient number of distinctive transit plates or devices showing the permit number for identification of the vehicles being transported by the permit holder, and the plates or devices may be used on a vehicle being driven, towed or transported by and under the control of the permit holder. That department shall collect the additional sum of one dollar (\$1) for each pair of transit plates or devices applied for and issued.

(3) The department of justice shall retain the permit and plate fees to defray costs of administering this act.

(4) The permit and transit plates or devices expire on December 31 of each year.

History: En. Sec. 6-401, Ch. 197, L. 1965; amd. Sec. 121, Ch. 316, L. 1974.

#### Compiler's Note

This chapter was designated as Part 4 of Chapter 6 of the Highway Code, entitled "Fees for Drive-Away or Tow-Away Transporters." There was no Part 3 of Chapter 6.

#### Amendments

The 1974 amendment substituted "department of justice" and "department" for "registrar of motor vehicles" throughout the section; and made minor changes in phraseology and punctuation.

**32-3402. One-trip fee in addition to permit and plate fees, payable quarterly.** In addition to the permit and plate fees, a permit holder shall pay to the department of justice a one-trip fee of five dollars (\$5) per driven vehicle. The fee shall be paid within fifteen (15) days after the end of the calendar quarter upon forms recommended or supplied by that department.

History: En. Sec. 6-402, Ch. 197, L. 1965; amd. Sec. 122, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "department of justice" and "that department" for "registrar of motor vehicles."

**32-3403. Disposition of funds collected.** The department of justice shall retain five per cent (5%) of the funds collected in payment of the trip fees to defray costs of administration. The remaining ninety-five per cent (95%) shall be remitted, on or before the fifteenth day of each month after collection, to the state treasurer for deposit to the credit of the department of highways.

History: En. Sec. 6-403, Ch. 197, L. 1965; amd. Sec. 123, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment of justice" for "registrar of motor vehicles" at the beginning of the section and "department of highways" for "commission" at the end.

**32-3404. Fees provided for are in addition to fees now payable under Title 8, Chapter 1.** The fees provided for drive-away or tow-away transportation are in addition to any fees payable by for-hire carriers under the provisions of Chapter 1, Title 8, Revised Codes of Montana, 1947, as amended.

History: En. Sec. 6-404, Ch. 197, L. 1965.

**32-3405. Fees provided are in lieu of other fees payable—election to pay other fees.** The fees provided for drive-away or tow-away transporters are declared to be in consideration of the right to use the highways of the state, and are in lieu of all other fees including those which might be payable, under the provisions of part 2 of this chapter [chapter 33 of this title]. However, any operator may elect to pay the fees payable under the provisions of that part [chapter].

History: En. Sec. 6-405, Ch. 197, L. 1965.

**32-3406. Exemptions from fees.** The fees provided for drive-away or tow-away transporters shall not apply to:

- (1) Vehicles regularly used in the hauling of vehicles by the truck-away method, or to the vehicles so transported.
- (2) Vehicles operated under dealers' licenses or plates.
- (3) Vehicles registerable under any other provisions of law.
- (4) Any person not issued a drive-away or tow-away permit.

History: En. Sec. 6-406, Ch. 197, L. 1965.

**32-3407. Display of plates.** A vehicle or combination of vehicles transported over the highways of the state by a permit holder shall display in a prominent position thereon, the distinctive transit plates or devices, the towing vehicle displaying such on the front thereof and a towed vehicle on the rear thereof.

History: En. Sec. 3, Ch. 133, L. 1953; Sec. 53-632, R. C. M. 1947; amd. and redes. 32-3407 by Sec. 185, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; and made minor changes in phraseology.

**32-3408. List of holders of permits and transit plates to be furnished** department of highways by department of justice. The department of justice shall furnish the department of highways a list of the permit holders and of the transit plates or devices issued to those permit holders.

History: En. Sec. 4, Ch. 133, L. 1953; Sec. 53-633, R. C. M. 1947; amd. and redes. 32-3408 by Sec. 186, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment renumbered this section; substituted "department of justice" for "registrar of motor vehicles";

substituted "department of highways" for "state highway commission"; and made minor changes in phraseology.

**CHAPTER 35—BOND ISSUES FOR STATE TOLL BRIDGES**

(Repealed—Section 209, Chapter 316, Laws of 1974)

**32-3501 to 32-3509. Repealed.****Repeal**

Sections 32-3501 to 32-3509 (Secs. 6-501 to 6-509, Ch. 197, L. 1965; Sec. 29, Ch.

234, L. 1971), relating to bond issues for state toll bridges, were repealed by Sec. 209, Ch. 316, Laws of 1974.

**CHAPTER 36—COUNTY TAX LEVIES FOR ROAD AND BRIDGE CONSTRUCTION**

- Section 32-3601. General road tax.  
 32-3602. Special bridge taxes—levy and collection.  
 32-3603. Suburban railway to pay county for use of bridge.  
 32-3604. Special tax for construction and maintenance.  
 32-3605. Additional tax levy for road and bridge construction.

**32-3601. General road tax.** (1) To raise revenue for the construction, maintenance, or improvement of public highways, each board of county commissioners may levy a general tax upon the taxable property in the county of not more than twelve (12) mills, except in fourth, fifth, sixth and seventh class counties which may levy not more than fifteen (15) mills, payable to the county treasurer. The tax from freeholders shall be collected the same as other taxes, and from nonfreeholders as the board may direct.

(2) This section shall not apply to incorporated cities and towns which, by ordinance, provide for the levy of a like tax for road, street, or alley purposes.

(3) All moneys collected under this section shall belong to the county road fund.

**History:** En. Sec. 7-101, Ch. 197, L. 1965; amd. Sec. 1, Ch. 83, L. 1967; amd. Sec. 1, Ch. 199, L. 1971.

**Compiler's Note**

Chapters 36 to 38, inclusive, of this title were designated as Chapter 7 of the Highway Code, entitled "County Finance." This chapter was designated as Part 1 of Chapter 7, entitled "Tax Levies for Road and Bridge Construction."

**Amendments**

The 1967 amendment increased the tax limit in subsection (1) from 10 to 12 mills.

The 1971 amendment inserted "except in fourth, fifth, sixth and seventh class counties which may levy not more than fifteen (15) mills" in the first sentence of subsection (1).

**32-3602. Special bridge taxes—levy and collection.** (1) Each board may levy a special tax not to exceed three (3) mills on all taxable property in the county for the purpose of constructing, maintaining and repairing free public bridges.

(2) An additional levy for these purposes may be made under the following conditions:



(a) In any county where the total linear feet of bridges or bridge construction is more than four thousand (4,000) feet and the taxable value of property in that county is four million dollars (\$4,000,000) or less, the board may, if necessary, levy one (1) mill.

(b) In counties where the total linear feet of bridges or bridge construction is more than six thousand (6,000) feet and the taxable value of property in that county is not less than four million dollars (\$4,000,000) nor more than twenty million dollars (\$20,000,000), the board may, if necessary, levy two (2) mills.

(3) For the purposes of this section, a free public bridge is defined as any drainage structure located on, over or through any road or highway.

(4) These taxes must be levied and collected in the same manner as other taxes. The money shall be kept as a special bridge fund, subject to the order of the board for use as herein provided, and shall not be transferable to any other fund.

History: En. Sec. 7-102, Ch. 197, L. 1965; amd. Sec. 1, Ch. 57, L. 1973. maximum taxable value of property specified in subdivision (2) (b) from twelve million dollars to twenty million dollars.

#### Amendments

The 1973 amendment increased the

**32-3603. Suburban railway to pay county for use of bridge.** (1) Before any bridge constructed and maintained by the county in any city or town may be used as a part of any street or suburban railway, the owner of that railway shall pay into the county bridge fund a sum determined by the board which shall not be less than one-fourth ( $\frac{1}{4}$ ) nor more than one-half ( $\frac{1}{2}$ ) of the cost of construction of the bridge.

(2) The railway owner shall also pay such portion of the cost of maintaining the bridge (not less than one-fourth [ $\frac{1}{4}$ ] nor more than one-half [ $\frac{1}{2}$ ]) as is determined by the board during the time the bridge is used by the railway.

History: En. Sec. 7-103, Ch. 197, L. 1965.

**32-3604. Special tax for construction and maintenance.** Each board may levy a special tax not to exceed five (5) mills on the taxable property in the county to defray the costs of any bridge required to be constructed and maintained by the county in any city or town.

History: En. Sec. 7-104, Ch. 197, L. 1965.

**32-3605. Additional tax levy for road and bridge construction.** (1) Each board may make an additional levy upon the taxable property in the county of ten (10) mills or less for constructing public highways and bridges.

(2) Before the additional levy may be made, the question shall be submitted to a vote of the people at some general or special election in the following form, inserting the number of mills to be levied and the name of the county: "Shall there be an additional levy of \_\_\_\_\_ mills

upon the taxable property in the county of \_\_\_\_\_, state of Montana, for the purpose of constructing public highways and bridges?

- ☐ Yes  
☐ No."

(3) A majority of the votes cast shall be necessary to permit the additional levy which shall be collected in the same manner as other road taxes.

History: En. Sec. 7-105, Ch. 197, L. 1965.

#### CHAPTER 37—LOCAL USE OF REGISTRATION AND OTHER VEHICLE FEES

- Section 32-3701. County motor vehicle fund.  
 32-3702. Population centers—city road fund—county road fund.  
 32-3703. Population centers—use of city road fund.  
 32-3704. Other counties—county road fund—city road fund.  
 32-3705. Counties other than population centers—use of city road fund.  
 32-3706. Use of county road fund.  
 32-3707. [Transferred.]

**32-3701. County motor vehicle fund.** All license and registration fees collected by the treasurer of the county in which any motor vehicle is registered shall be credited to the county motor vehicle fund.

History: En. Sec. 7-201, Ch. 197, L. 1965. Compiler's Note

This chapter was designated as Part 2 of Chapter 7 of the Highway Code, entitled "Registration and Other Fees."

**32-3702. Population centers—city road fund—county road fund.** (1) The county treasurer shall segregate from the county motor vehicle fund, and designate as the "city road fund":

(a) Fifty per cent (50 %) of the net license fees derived from the registration of motor vehicles whose owners reside within the limits of any incorporated city.

(i) Having a population of thirty-five thousand (35,000) or more according to the federal census of 1930, or

(ii) Lying within one (1) mile of the limits of an incorporated city having a population of thirty-five thousand (35,000) or more according to the federal census of 1930.

(b) Twenty-five per cent (25 %) of the net license fees derived from the registration of motor vehicles whose owners reside within the limits of any incorporated city having a population of ten thousand (10,000) or more according to the federal census of 1950, which city is located in a county which has an area of less than seven hundred and fifty (750) square miles.

(2) The balance of the county motor vehicle fund remaining after segregation of the city road fund shall be transferred to the "county road fund."

History: En. Sec. 7-202, Ch. 197, L. 1965; amd. Sec. 1, Ch. 89, L. 1967.

#### Compiler's Note

The compiler has inserted the bracketed designation for subsection (1).

**Amendments**

The 1967 amendment substituted "1930" for "1960" in subdivision (a)(i) and (a)(ii), and substituted "1950" for "1960" in subdivision (b).

**Repealing Clause**

Section 2 of Ch. 89, Laws 1967 re-

pealed all acts and parts of acts in conflict therewith.

**Effective Date**

Section 3 of Ch. 89, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 21, 1967.

**32-3703. Population centers—use of city road fund.** (1) At the end of each month, the county treasurer shall pay to the appropriate city treasurer the fees held in the city road fund.

(2) The city treasurer shall hold the fees so paid in a separate "city road fund," which shall be used by the city council only for the construction, repair, and maintenance of permanent highways and streets within the corporate limits.

(3) All such work shall be under the supervision of the county road superintendent, who shall co-operate with the city council in designating the highway or street upon which work is to be done and in selecting the type of pavement to be used.

(4) The cost of supervision by the county surveyor shall not exceed five per cent (5 %) of the cost of the work.

**History:** En. Sec. 7-203, Ch. 197, L. 1965.

**32-3704. Other counties—county road fund—city road fund.** (1) In every county which does not have a city and area populated as provided in section 7-202 of this part [32-3702 of this chapter], the county treasurer shall divide the county motor vehicle fund between a "city road fund" and a "county road fund."

(2) The division shall be in the ratio determined by the board of county commissioners. The board shall determine the ratio by comparing the total number of miles of public streets and highways, which are not either state or federal highways, situated within the limits of incorporated cities and towns with the total number of miles of public streets and highways, which are not either state or federal highways, outside of such corporate limits; providing that state or federal roads may be counted if they are by written agreement maintained by the city or county.

**History:** En. Sec. 7-204, Ch. 197, L. 1965; amd. Sec. 1, Ch. 16, L. 1967.

are not either state or federal highways" after "streets and highways" each time those words appear and added the proviso at the end of subsection (2).

**Amendments**

The 1967 amendment inserted "which

**32-3705. Counties other than population centers—use of city road fund.** (1) At the end of each month, the county treasurer shall pay to the treasurer of each incorporated city or town such proportion of the city road fund as directed by the board of county commissioners.

(2) The city or town treasurer shall hold the fund so paid in a separate "city road fund," which shall be used by the city or town council only for the construction, repair, and maintenance of permanent highways and streets within the corporate limits.

**History:** En. Sec. 7-205, Ch. 197, L. 1965.



**32-3706. Use of county road fund.** The county road fund of each county shall be used for the construction, repair, and maintenance of all public highways within its boundaries which are outside the corporate limits of any city or town and are not either state or federal highways.

**History:** En. Sec. 7-206, Ch. 197, L. 1965.

**32-3707. [Transferred.]**

**Compiler's Notes**

Section 124, Ch. 316, Laws of 1974 re-numbered this section as sec. 53-639.1.

**CHAPTER 38—COUNTY ROAD AND BRIDGE BONDS**

- Section 32-3801. County commissioners may issue bonds.  
 32-3802. Negotiations for refunding.  
 32-3803. Single purpose highway—bridge.  
 32-3804. Limitation on amount of bonds—issuance in excess of limitations void.  
 32-3805. Term—power to redeem—maximum interest.  
 32-3806. Form of bonds.

**32-3801. County commissioners may issue bonds.** (1) Each board may issue, negotiate and sell coupon bonds on the credit of the county:

(a) To construct or improve, or acquire rights of way for public highways; or bridges.

(b) To refund, pay and redeem optional, redeemable or maturing highway or bridge bonds when there are not sufficient funds available and it is deemed in the best interests of the county to refund the bonds.

(2) The value of the bonds issued and all other outstanding indebtedness of the county shall not exceed five per cent (5%) of the value of the taxable property within the county as ascertained by the last preceding general assessment.

(3) The bonds shall be issued as provided in section 16-2008.

**History:** En. Sec. 7-301, Ch. 197, L. 1965.

**Compiler's Note**

This chapter was designated as Part 3 of Chapter 7 of the Highway Code, entitled "Bonds."

**32-3802. Negotiations for refunding.** (1) Whenever the total indebtedness of a county exceeds five per cent (5%) of the value of the taxable property therein and the board determines that the county is unable to pay such indebtedness in full, the board may:

(a) Negotiate with the bondholders for an agreement or agreements whereby the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest thereon in satisfaction thereof.

(b) Enter into such agreement or agreements.

(c) Issue refunding bonds for the amount agreed upon. These bonds may be issued in more than one series and each series may be either amortization or serial bonds.

(2) The plan agreed upon between the board and the bondholders shall be embodied in full in the resolution providing for the issue of the bonds.

History: En. Sec. 7-302, Ch. 197, L. 1965; amd. Sec. 14, Ch. 100, L. 1973.      substitutional limitation of" before "five per cent" in the preliminary paragraph of subsection (1).

#### Amendments

The 1973 amendment deleted "the con-

**32-3803. Single purpose highway—bridge.** (1) It shall be deemed a single purpose to:

(a) Acquire a right of way for and construct a public highway including any bridge or bridges thereon.

(b) Contribute to the cost of a federal-aid bridge.

(c) Contribute to the cost of a federal-aid highway project on a highway leading to a federal-aid bridge.

(2) Construction of two or more bridges not forming a part of the same public highway shall be deemed separate purposes.

(3) Nothing contained in this section shall be construed as amending or repealing sections 16-1163—16-1165.

History: En. Sec. 7-303, Ch. 197, L. 1965.

**32-3804. Limitation on amount of bonds—issuance in excess of limitations void.** (1) Except as otherwise provided hereafter and in section 16-2010, no county shall issue bonds which, with all outstanding bonds and warrants, except county high school bonds and emergency bonds, will exceed two and one-half per cent ( $2\frac{1}{2}\%$ ) of the value of the taxable property therein. The taxable property shall be ascertained by the last assessment for state and county taxes prior to the issuance of such bonds.

(2) A county may issue bonds which, with all outstanding bonds and warrants will exceed two and one-half per cent ( $2\frac{1}{2}\%$ ), but will not exceed five per cent (5%) of the value of such taxable property, when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges or highways which have been destroyed or damaged by an act of God, disaster, catastrophe, or accident.

(3) All bonds issued by any county in excess of the limitations herein fixed shall be null and void, except that the limitations shall not apply to refunding bonds issued to pay or retire county bonds lawfully issued prior to January 1, 1932.

History: En. Sec. 7-304, Ch. 197, L. 1965; amd. Sec. 15, Ch. 100, L. 1973; amd. Sec. 13, Ch. 391, L. 1973.

#### Amendments

Each of the 1973 amendments deleted a subsection (4) defining "value of the taxable property" in the same sense as in section 5 of article XIII of the 1889 constitution.

#### Compiler's Notes

This section was amended twice in 1973, once by Ch. 100, and once by Ch. 391. The amendments were identical.

**32-3805. Term—power to redeem—maximum interest.** (1) Bonds issued under subsection (1) of section 32-3801 may not be issued for a longer term than twenty (20) years.

(2) A bond issued under subsection (1) (b) of that section may not be issued for a term longer than ten (10) years, except that:

(a) If the unexpired term of the bonds to be refunded is greater than ten (10) years, the refunding bonds may be issued for the unexpired term; or

(b) If the ten (10) year term requires an annual tax levy for payment of the refunding bonds which exceeds ten (10) mills on all property subject to taxation, the term may be so extended as to reduce the annual levy to ten (10) mills. In no event shall the term exceed twenty (20) years.

(3) All bonds issued for a term longer than five (5) years shall be redeemable at the option of the county five (5) years after the date of issue and on any payment due date thereafter before maturity. This statement shall appear on the face of each bond.

(4) Interest shall be payable semiannually.

**History:** En. Sec. 7-305, Ch. 197, L. 1965; amd. Sec. 30, Ch. 234, L. 1971; amd. Sec. 125, Ch. 316, L. 1974.

#### Amendments

The 1971 amendment deleted from the beginning of subsection (4) "The maximum rate of interest which any bonds shall bear is six per cent (6%) per annum"; and made a minor change in style.

The 1974 amendment substituted "under subsection (1)(b) of that section" in subsection (2) for "under subsection (2) of that section"; and made minor changes in phraseology and style.

#### Compiler's Note

The reference in subsection (2) of this section to subsection (2) of section 32-3801 may be in error. It may have been intended to refer to paragraph (1) (b) of section 32-3801.

**32-3806. Form of bonds.** (1) All bonds issued by any county shall be either amortization bonds or serial bonds. Amortization bonds shall be issued in preference to serial bonds.

(2) The term "amortization bonds" means that form of bond on which a part of the principal is required to be paid each time interest becomes due and payable. The part payment of principal increases with each following installment in the same amount the interest payment decreases, so that the combined amount payable on principal and interest is the same on each interest payment date. However, the final payment may vary in amount from the other payments to the extent resulting from disregarding fractional cents in the other payments.

(3) The term "serial bonds" means a bond issue payable in equal annual installments, one (1) installment consisting of one (1) or more bonds becoming due and payable each year. The amount to be paid and redeemed each year shall be determined by dividing the total amount of the bonds to be issued by the total number of years the issue is to run, so that the total amount of principal to be paid each year will be the same. The amount of installments becoming due and payable the first year, or the first and second years, may vary from the others to the extent which results from fixing the amounts of each bond of the other installments at one hundred dollars (\$100), five hundred dollars (\$500) or one thousand dollars (\$1,000) as may be determined by the board.

**History:** En. Sec. 7-306, Ch. 197, L. 1965.



# CHAPTER 39—ACQUISITION AND DISPOSITION OF PROPERTY BY STATE

- Section 32-3901. Rights acquired by public in highway.  
 32-3902. General power of department to acquire interests in property.  
 32-3903. Purposes for which property acquired.  
 32-3904. Exercise of right of eminent domain—presumption.  
 32-3905. Acquisition of whole parcel—sale of excess.  
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 32-3920. Acquisition of property for controlled access facility.  
 32-3923. Definitions.  
 32-3924. Advisory assistance.  
 32-3925. Compensation for moving expense as part of cost of construction—fixed payments in lieu of actual expense—dwelling—business or farm operation.  
 32-3926. Additional payment for realty with qualified dwelling—period of occupancy—amount—owner must subsequently purchase dwelling.  
 32-3927. Additional payment for realty with other dwelling—period of occupancy—amount.  
 32-3928. Review of application for assistance—highway commission's decision final.  
 32-3929. Rules.  
 32-3930. Assistance payments not income for state tax purposes.  
 32-3931. No new element of condemnation damages created.

**32-3901. Rights acquired by public in highway.** By taking or accepting land for a highway, the public may acquire either a fee simple or any lesser estate or interest.

**History:** En. Sec. 8-101, Ch. 197, L. 1965.

## Compiler's Note

Chapters 39 and 40 of this title were designated as Chapter 8 of the Highway

Code, entitled "Acquisition and Disposition of Property and Interests Therein." This chapter was designated as Part 1 of Chapter 8, entitled "Acquisition and Disposition by State."

**32-3902. General power of department to acquire interests in property.** Notwithstanding any other provision of law, the department of highways may acquire by purchase or other lawful manner lands or other real property, excluding oil, gas and mineral rights, which it considers reasonably necessary for present or future highway purposes. The department may acquire a fee simple or lesser estate or interest.

**History:** En. Sec. 8-102, Ch. 197, L. 1965; amd. Sec. 126, Ch. 316, L. 1974.

partment of highways" and "department" for "commission"; and made minor changes in phraseology and punctuation.

## Amendments

The 1974 amendment substituted "de-

**32-3903. Purposes for which property acquired.** The acquisition of lands or other property, or any interest therein, for present or future highway purposes includes, but is not limited to any of the following purposes: (1) For rights of way, including those necessary for highways within cities.

(2) For exchanging lands or other property or any interest therein for other such lands or interests for rights of way or other authorized purposes. The right of eminent domain shall not be exercised for this purpose.

(3) For deposits of road building materials, including rock, gravel, sand, and earth for reasonably foreseeable future road building purposes and uses. The right of eminent domain shall not be exercised to acquire any such deposits which constitute a component part of an existing private business enterprise.

(4) For offices, weighing stations, shops, storage yards, buildings, rest areas, informational sites, or communication facilities.

(5) For parks adjoining or near any highway.

(6) For the culture and support of trees or shrubs which benefit any highway by aiding in the maintenance and preservation of the roadbed.

(7) For drainage in connection with any highway.

(8) For the maintenance of an unobstructed view of any portion of a highway so as to promote the safety of the traveling public.

(9) For the construction and maintenance of stock lanes or trails.

(10) For the construction and maintenance or replacement of private or public drainage systems, or natural water or drainage courses made necessary by highway construction.

(11) For providing land or other real property easements or rights of way for necessary relocation of existing utilities, utility easements, or other easements for facilities or purposes then in place or in effect upon a proposed right of way.

**History:** En. Sec. 8-103, Ch. 197, L. 1965.

## DECISIONS UNDER FORMER LAW

### Market Value of Condemned Land

Where highway commission condemned land for purposes of gaining an easement for the construction and maintenance of a state highway, and not for obtaining a deposit of gravel, sand, and other materials on the land, testimony as to the value of such materials was inadmissible as speculative, remote and conjectural and not within the purpose of former section 32-1615 (c). *State Highway Commission v. Mott*, 142 M 402, 384 P 2d 922.

### Railroad Right of Way

Former section 32-1615 (k) permitted the state to condemn land in order to provide right of way for a railroad being moved to allow construction of public highways. *State ex rel. De Puy v. District Court*, 142 M 328, 384 P 2d 501.

### Rental of Unused Right of Way

The 1961 amendment of former section 32-1615 so as to give express authority for the rental of unused right of way rendered moot a taxpayer's action to restrain the highway commission from granting an encroachment permit, where there was no indication that the permit, when granted, would violate the terms of the statutory amendment. *Wilson v. State Highway Commission*, 140 M 253, 370 P 2d 486, 488.

### Transfer of Land

Any manner of transferring unused highway right of way which was inconsistent with former section 32-1615 was by implication excluded. *Wilson v. State Highway Commission*, 140 M 253, 370 P 2d 486, 488.

The state highway commission cannot

give away or loan gratuitously the use of an unused highway right of way. *Wilson v. State Highway Commission*, 140 M 253, 370 P 2d 486, 488.

**32-3904. Exercise of right of eminent domain—presumption.** (1) Whenever the department cannot acquire lands or other property or interests in the lands or property at a price or cost which it considers reasonable, it may direct the attorney general or any county attorney to procure the interests by proceedings to be instituted as provided in sections 93-9901—93-9926 against all nonaccepting landholders.

(2) It shall not so direct the attorney general or any county attorney until it adopts an order declaring that:

(a) Public interest and necessity require the construction or completion by the state of the highway or improvement for one of the purposes set forth in section 32-3903.

(b) The interest described in the order and sought to be condemned is necessary for the highway or improvement.

(c) The highway or improvement is planned and located in a manner which will be compatible with the greatest public good and the least private injury.

(3) The order creates and establishes a disputable presumption:

(a) Of the public necessity of the proposed highway or improvement.

(b) That the taking of the interest sought is necessary therefor.

(c) That the proposed highway or improvement is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.

**History:** En. Sec. 8-104, Ch. 197, L. 1965; amd. Sec. 127, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "commission" in subsection (1); substituted "order" for "resolution" in subsection (2), subdivision (2)(b) and subsection (3); and made minor changes in phraseology.

#### Burden of Proof

In order to attack the presumption raised by a resolution of public interest and necessity for condemnation of a strip of land without providing for a livestock underpass, landowner must introduce evidence as to the amount of his damages if the land is taken without building an underpass. *State Highway Commission v. Parini*, 159 M 248, 496 P 2d 1140.

### DECISIONS UNDER FORMER LAW

#### Burden of Proof

Where commission condemned defendant's land to build bypass through it rather than reconstruct highway through town, it became incumbent upon the defendant to show fraud, abuse of discretion or arbitrary action in order to defeat the commission's action, whereas the commission had only to establish that the taking of the property was reasonably necessary for rebuilding the highway. *State Highway Commission v. Crossen-Nissen Co.*, 145 M 251, 400 P 2d 283, distinguished in 155 M 39, 47, 466 P 2d 594.

#### Judicial Interference

It is not within the province of the judicial branch of government to interfere with the exercise of eminent domain in the absence of clear and convincing evidence of arbitrariness or abuse of discretion.

by commission. *State Highway Commission v. Crossen-Nissen Co.*, 145 M 251, 400 P 2d 283, distinguished in 155 M 39, 47, 466 P 2d 594.

#### Power To Condemn

The power of eminent domain is vested exclusively in the legislature, and can be exercised only by the legislature and those agencies to whom it has delegated the power. *State Highway Commission v. Crossen-Nissen Co.*, 145 M 251, 400 P 2d 283.

#### Selection of Route

Highway commission did not abuse its discretion in taking farm land by eminent domain even though it was shown that town through which old highway had passed would be financially harmed and bypass would cost more to build, since the



resulting savings in travel costs to highway users, in addition to the compensation paid the petitioners, offset disadvantages claimed by them. State Highway

Commission v. Crossen-Nissen Co., 145 M 251, 400 P 2d 283, distinguished in 155 M 39, 47, 466 P 2d 594.

**32-3905. Acquisition of whole parcel—sale of excess.** (1) Whenever any interest in a part of a parcel of land or other real property is to be acquired for highway purposes, leaving the remainder in a shape or condition as to be of little market value, or to give rise to claims or litigation over severance or other damage, the department may acquire the whole parcel. It may sell or exchange the remainder for other property needed for highway purposes.

(2) Whenever a part of a parcel of land acquired for highway purposes is in a shape or size as to come within section 11-614, the department shall prepare and file the required plat in the office of the county clerk and recorder.

**History:** En. Sec. 8-105, Ch. 197, L. 1965; amd. Sec. 128, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "commission" in two places; and made minor changes in phraseology. *Way Commission v. Chapman*, 152 M 79,

#### Amount of Property Which May Be Taken

Trial court did not exceed powers under statute when it limited amount of property sought to be appropriated by state to that portion of property actually needed for proposed highway improvement be-

cause question whether public interest required taking of entire parcel was question of fact to be determined by court; preliminary order of court limiting amount of appropriation to that actually required for construction of city street improvements was supported by evidence that excess land retained some value as separate parcel notwithstanding commission's argument that remaining land was financial remnant of such value as to be of little market value and give rise to claims over severance and other damages. *State Highway Commission v. Chapman*, 152 M 79, 446 P 2d 709.

**32-3906. Power to acquire for future.** (1) The power conferred by chapters 39 and 40 of this title to acquire interests in lands or other real property includes power to acquire for reasonably foreseeable future needs.

(2) The department may lease unused portions of lands or other real property which are held for highway purposes and interstate highway rights of way which are not presently needed for highway purposes on the terms and conditions which it decides. The department may repair, maintain, and care for the property in order to secure rent from it.

(3) All rent received shall be deposited to the credit of the department.

**History:** En. Sec. 8-106, Ch. 197, L. 1965; amd. Sec. 129, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "commission" throughout the section; and made minor changes in phraseology.

**32-3907. Road building materials.** (1) A right of way or easement acquired by the department for construction, operation, repair, reconstruction, or maintenance of highways includes, among others, the right to use, remove, relocate, redistribute, or otherwise dispose of gravel and other road-building materials found or located within the boundaries of the right of way or easement.

(2) For the purposes of chapters 39 and 40 of this title, the gravel or materials is considered to be real property and not minerals.

History: En. Sec. 8-107, Ch. 197, L. 1965; amd. Sec. 130, Ch. 316, L. 1974. department" for "commission" in subsection (1); and made minor changes in phraseology.

#### Amendments

The 1974 amendment substituted "de-

**32-3908. No compensation in certain cases—exceptions.** (1) Whenever the department files a description and plan as provided in section 32-2413, no consideration, allowance or assessment of values or compensation shall be made in the purchase or condemnation of buildings or improvements or subdivisions placed or erected on the land covered by the plan after the filing.

(2) The establishment of the highway location covered by the description and plan shall be ineffective one year after filing if no action to condemn or acquire the property has been commenced.

(3) Nothing in this section or in section 32-2413 applies to crops or similar improvements planted on the lands described. They are governed by section 93-9913.

History: En. Sec. 8-108, Ch. 197, L. 1965; amd. Sec. 131, Ch. 316, L. 1974. department" for "commission" in subsection (1); and made minor changes in phraseology.

#### Amendments

The 1974 amendment substituted "de-

**32-3909. Exchange of interests in real property.** (1) The department may determine that an interest in real property, however acquired by it, is no longer necessary to the laying out, altering, construction, improvement, or maintenance of a highway. It may then exchange the interest, either as entire or partial consideration, for any other interest in real property needed for highway purposes. The department may establish the manner and terms and conditions for the exchange.

(2) The owner from whom the interest was originally acquired by the state, or his successor in interest, has the right to require the department to offer the land for sale in the manner set forth in sections 32-3910 and 32-3911. The department shall notify the owner or successor in interest of its intention to exchange the interest. The owner shall make his demand for sale by registered mail to the department within ten (10) days after receipt of notice from the department.

History: En. Sec. 8-109, Ch. 197, L. 1965; amd. Sec. 132, Ch. 316, L. 1974. department" for "commission" throughout the section; and made minor changes in phraseology.

#### Amendments

The 1974 amendment substituted "de-

**32-3910. Sale of interests in real property.** The department may sell an interest in real property, however acquired by it, which it determines is not necessary to the laying out, altering, construction, improvement, or maintenance of a highway. If the interest is reasonably of a value in excess of one hundred dollars (\$100), sale shall be made to the highest bidder at public auction or by sealed bids as the department decides. The sale shall be conducted as provided in section 32-3911.

**History:** En. Sec. 8-110, Ch. 197, L. 1965; amd. Sec. 133, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "commission" in two places; and made minor changes in phraseology.

#### Easement

Easement granting state right to use

property adjoining highway as public park was not such an "interest in real property" as to require public sale of park area upon abandonment of highway and park area; quitclaim deed reconveying state's interest to fee holder was valid. Park County Rod and Gun Club v. Department of Highways, — M —, 517 P 2d 352.

**32-3911. Conduct of sale.** (1) The department shall publish notice of the sale in a newspaper published in the county in which the interest is located once a week for two (2) successive weeks. Sale shall be held in the county wherein the property is located unless the department finds it impractical in which case the sale will be held at the office of the department at the capitol.

(2) Before the sale of an interest having a value in excess of one hundred dollars (\$100), the department shall have it appraised at a price representing a fair market value. The appraised value shall be stated in the published notice.

(3) A sale may not be made of an interest unless it has been appraised within three (3) months prior to the date of the sale. A sale may not be made for less than ninety per cent (90%) of the appraised value.

(4) Title to an interest may not pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the department.

**History:** En. Sec. 8-111, Ch. 197, L. 1965; amd. Sec. 1, Ch. 21, L. 1974; amd. Sec. 134, Ch. 316, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 21 and once by Ch. 218. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 21, Laws of 1974, substituted the last sentence of subsection (1) for a sentence reading: "Sale shall be held at the office of the commission at the capitol."

Chapter 316, Laws of 1974, substituted references to "department" in subsections (1), (2), and (4) for references to "commission" and made minor changes in phraseology.

**32-3912. Option of original owner or successor in interest to purchase at sale price.** The owner from whom the interest was originally acquired, or his successor in interest, shall have the option to purchase the interest by offering therefor an amount of money equal to the highest bid received for the interest at the sale. The offer shall be sent to the department by registered mail within ten (10) days from the date of the sale.

**History:** En. Sec. 8-112, Ch. 197, L. 1965; amd. Sec. 135, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "commission."

**32-3913. Private sale if no bid or offer.** (1) If, after proper notice is published, the department receives neither bid at public sale nor offer from the original owner or his successor in interest, it may at any time



thereafter sell the interest at private sale. At the sale, the department may accept as the purchase price an amount of money not less than ninety per cent (90%) of the appraised value.

(2) Title to an interest may not pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the department.

**History:** En. Sec. 8-113, Ch. 197, L. 1965; amd. Sec. 136, Ch. 316, L. 1974. department" for "commission" throughout the section; and made minor changes in phraseology.

**Amendments**

The 1974 amendment substituted "de-

**32-3914. Sale of personal property—maps, books, other printed matter.**

(1) The department may sell at public or private sale, as it determines, an interest in personal property, however acquired by it, which it determines is not necessary to the laying out, altering, construction, improvement, or maintenance of a highway.

(2) The department may sell at public or private sale, as it determines, maps, books, pamphlets, or other printed matter, prepared or acquired by the department. The department may sell copies of highway records to the public and may set reasonable prices for them.

(3) The proceeds from sales made under this section shall be paid into the state treasury to the credit of the department.

**History:** En. Sec. 8-114, Ch. 197, L. 1965; amd. Sec. 137, Ch. 316, L. 1974. department" for "commission" in two places; and made a minor change in phraseology.

**Amendments**

The 1974 amendment substituted "de-

**32-3915. Conveyances—execution—contents.** (1) Land or an interest in land sold by the department shall be conveyed only when full payment has been made for it. It shall be conveyed by a deed or patent of conveyance without covenants which recites that it was issued under this chapter.

(2) The deed or patent shall contain a reservation of easements for rights of way for the benefit of the United States, and all other reservations to which the land conveyed may be subject.

(3) The deed or patent shall be signed by the governor, or, in case of his absence or inability, the lieutenant governor. It shall be attested by the secretary of state and have attached the great seal of the state. It need not be acknowledged.

**History:** En. Sec. 8-115, Ch. 197, L. 1965; amd. Sec. 138, Ch. 316, L. 1974. department" for "commission" in subsection (1); and made minor changes in phraseology.

**Amendments**

The 1974 amendment substituted "de-

**32-3916. Rendering irrigable lands unusable—unpaid construction costs.** (1) Whenever the department acquires irrigable land for highway purposes, or acquires land as to render other irrigable land unusable for irrigation, it shall pay to the owner of the irrigation or drainage

project, in addition to other sums allowed by law, a proportionate share of the unpaid construction costs of the project or drainage district.

(2) The department shall also pay a lump-sum amount to the district sufficient to produce on an amortized basis for a reasonable period not to exceed ninety (90) years, a sum of money equal to the annual increase in operation and maintenance costs against the remaining lands under irrigation in the district resulting from the severance from the district of the lands acquired by the department and not overcome by bringing in new or additional land under irrigation. For the purpose of determining the amount of the lump-sum payment, the annual operation and maintenance assessment of the district shall be considered to be the average for the five (5) years, or so many years as the district has assessment experience, if less than five (5) years, preceding the date of acquisition.

History: En. Sec. 8-115, Ch. 197, L. 1965; amd. Sec. 1, Ch. 299, L. 1969; amd. Sec. 139, Ch. 316, L. 1974.

#### Amendments

The 1969 amendment added the second paragraph.

The 1974 amendment substituted "department" for "commission" throughout the section; and made minor changes in phraseology and style.

#### Effective Date

Section 2 of Ch. 299, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 11, 1969.

#### Cost of Future Operation and Maintenance

State highway commission is not obligated to pay irrigation district for future cost of operation and maintenance attributable to lands taken within irrigation district for highway purposes since lands taken will not continue to benefit from services of irrigation district, notwithstanding fact that takings have reduced total irrigable acreage of district and thereby increased per acre cost of operation and maintenance of district. *Helena Valley Irrig. Dist. v. State Highway Commission*, 150 M 192, 433 P 2d 791.

### 32-3917. Abandonment or vacation of federal-aid or state highways.

Every federal-aid or state highway once established must continue until abandoned or vacated by operation of law, or by judgment of a court of competent jurisdiction, or by a proper order of the commission.

History: En. Sec. 8-117, Ch. 197, L. 1965.

32-3918. Highway crossing railroad, canal, or ditch. (1) Whenever any federal-aid or state highway is laid out on public lands across any railroad, canal, or ditch, the owners or users thereof must, at their expense, so prepare the railroad, canal, or ditch that the highway may cross it without damage or delay.

(2) When the right to cross is obtained through the judgment of any court, no damages shall be awarded.

History: En. Sec. 8-118, Ch. 197, L. 1965.

### 32-3919. Repealed.

#### Repeal

Section 32-3919 (Sec. 8-119, Ch. 197, L. 1965), relating to rights of way for toll bridges, was repealed by Sec. 209, Ch. 316, Laws of 1974.

**32-3920. Acquisition of property for controlled access facility.** (1) The highway authorities of the state, counties, incorporated cities and towns, respectively, or in co-operation one with the other, may acquire private or public property and property rights for controlled access highways or controlled access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired by gift, devise, purchase, or condemnation, in the same manner as may now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

(2) A right of way is hereby given, dedicated, and set apart for controlled access highways or controlled access facilities through, over, upon, or across any county road and any street or alley intersecting a controlled access highway. Acquisition of any county road, street, or alley for use as a controlled access highway or controlled access facility shall be deemed a superior and more necessary public use and purpose than the public use or purpose to which such road, street, or alley has theretofore been dedicated.

**History:** En. Sec. 8-120, Ch. 197, L. 1965.

#### DECISIONS UNDER FORMER LAW

##### Judicial Determination of Necessity

In adopting former section 32-2006 (controlled access highway law) the legislature is presumed to have considered sections 93-9905 and 93-9911, R. C. M.

1947, and the power to determine the public necessity of a proposed highway or facility remains with the trial judge. *State Highway Commission v. Yost Farm Co.*, 142 M 239, 384 P 2d 277.

#### 32-3921, 32-3922. Repealed.

##### Repeal

Sections 32-3921 and 32-3922 (Secs. 1, 2, Ch. 212, L. 1969; Sec. 1, Ch. 426, L. 1971), relating to authorization for pay-

ment of moving expenses of persons affected by real property acquisitions, were repealed by Sec. 209, Ch. 316, Laws of 1974.

#### 32-3923. Definitions. In sections 32-3923 through 32-3931:

(a) "Displaced person" means any individual, family, business or farm operation which moves from real property acquired for state highway purposes or for a federal-aid highway.

(b) "Individual" means a person who is not a member of a family.

(c) "Family" means two (2) or more persons living together in the same dwelling unit who are related to each other by blood, marriage, adoption or legal guardianship.

(d) "Business" means any lawful activity conducted primarily for the purchase and resale, manufacture, processing or marketing of products, commodities, or other personal property; or for the sale of services to the public; or by a nonprofit corporation.

(e) "Farm operation" means any activity conducted primarily for the production of one (1) or more agricultural products or commodities for sale and home use, and customarily producing the products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.



**History:** En. Sec. 3, Ch. 212, L. 1969; amd. Sec. 140, Ch. 316, L. 1974.

sections 32-3923 through 32-3931" in the introductory sentence for "As used in this act"; and made minor changes in phraseology.

**Amendments**

The 1974 amendment substituted "In

**32-3924. Advisory assistance.** (a) The department of highways may give relocation advisory assistance to an individual, family, business or farm operation displaced because of the acquisition of real property for a project on the state highway systems.

(b) In giving assistance, the department may establish a temporary local relocation advisory assistance office to assist in obtaining replacement facilities for individuals, families and businesses which must relocate because of the acquisition of right of way for a project on the state highway systems.

**History:** En. Sec. 4, Ch. 212, L. 1969; amd. Sec. 141, Ch. 316, L. 1974.

partment of highways" and "department" for "commission"; and made minor changes in phraseology.

**Amendments**

The 1974 amendment substituted "de-

**32-3925. Compensation for moving expense as part of cost of construction—fixed payments in lieu of actual expense—dwelling—business or farm operation.** (a) As a part of the cost of construction the department may compensate a displaced person for his actual and reasonable expense in moving himself, family, business or farm operation, including moving personal property, and for his actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, not to exceed an amount equal to the reasonable expenses that would have been required to relocate the property, as determined by the department, and actual reasonable expenses in searching for a replacement business or farm.

(b) A displaced person who moves from a dwelling may elect to receive, instead of the payments authorized by subsection (a), a moving expense allowance, determined according to a schedule established by the department, not to exceed three hundred dollars (\$300), and in addition a dislocation allowance of two hundred dollars (\$200).

(c) A displaced person who moves or discontinues his business or farm operation may elect to receive instead of the payment authorized by subsection (a), a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, except that the payment may not be less than two thousand five hundred dollars (\$2,500) nor more than ten thousand dollars (\$10,000). In the case of a business, a payment may not be made under this subsection unless the department is satisfied that the business cannot be relocated without a substantial loss of patronage, and is not a part of a commercial enterprise having at least one (1) other establishment, not being acquired, which is engaged in the same or similar business. For purposes of this subsection, the term "average annual net earnings" means one-half ( $\frac{1}{2}$ ) of any net earnings of the business or farm operation, before federal and state income taxes, during the two (2) taxable years immediately

preceding the taxable year in which the business or farm operation moves from the real property acquired for the project or during such other period which the department determines to be more equitable for establishing the earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse or his dependents during this two (2) year period. To be eligible for the payment authorized by this subsection, the business or farm operation must make its state income tax returns available and its financial statements and accounting records available for audit and confidential use to determine the payment authorized by this subsection.

History: En. Sec. 5, Ch. 212, L. 1969; amd. Sec. 2, Ch. 426, L. 1971; amd. Sec. 142, Ch. 316, L. 1974.

#### Amendments

The 1971 amendment added the language commencing with "actual direct losses" and continuing to the end of subdivision (a); increased the limits for moving expense allowance and dislocation allowance from \$200 to \$300, and from \$100 to \$200 respectively in subdivision (b); inserted the provision for a minimum payment of \$2,500 in the first sentence of

subdivision (c); increased the maximum payment under the first sentence of subdivision (c) from \$5,000 to \$10,000; and inserted "or during such other period as the commission determines to be more equitable for establishing such earnings" in the latter part of the third sentence of subdivision (c).

The 1974 amendment substituted "department" for "commission" throughout the section; substituted "department" for "state" near the end of subsection (a); and made minor changes in phraseology and punctuation.

**32-3926. Additional payment for realty with qualified dwelling—period of occupancy—amount—owner must subsequently purchase dwelling.**

(1) In addition to the payments authorized by section 32-3925 as a part of the cost of construction, the department may make the following payments to the owner of real property acquired for a project on the state highway systems which is improved with a single, two (2) or three (3) family dwelling, actually owned and occupied by the owner for not less than one hundred eighty (180) days prior to the initiation of negotiations for the acquisition of the property:

(a) A payment not to exceed fifteen thousand dollars (\$15,000) which, when added to the acquisition payment, equals the reasonable price required for a comparable dwelling determined, in accordance with standards established by the department, to be a decent, safe, and sanitary dwelling adequate to accommodate the displaced owner, reasonably accessible to public services and place of employment and available on the market;

(b) A payment, if any, which will compensate the displaced person for increased costs which the person is required to pay for financing the acquisition of a comparable replacement dwelling. This payment shall be made only if the dwelling acquired by the department was encumbered by a bona fide mortgage which was a valid lien on the dwelling for not less than one hundred eighty (180) days prior to the initiation of negotiations for the acquisition of the dwelling. This payment shall be equal to the excess in the aggregate interest and other debt service cost of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling under the remainder term of the mortgage on the acquired dwelling reduced to discounted present value. The discount rate shall be

the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located;

(c) The payment of reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incidental to the purchase of replacement dwelling but not including pre-paid expenses.

(2) Payments shall be made only to a displaced owner who purchases and occupies a dwelling, that meets standards established by the department, within one (1) year subsequent to the date on which he is required to move from the dwelling acquired for the project.

History: En. Sec. 6, Ch. 212, L. 1969; amd. Sec. 3, Ch. 426, L. 1971; amd. Sec. 143, Ch. 316, L. 1974.

\$15,000; substituted "reasonable price" for "average price" in subdivision (1)(a); inserted subdivisions (1)(b) and (1)(c); and made minor changes in phraseology and style.

The 1974 amendment substituted "department" for "commission" in subsection (1), subdivision (1)(a) and subsection (2); substituted "department" for "state" in subdivision (1)(b); and made minor changes in phraseology, punctuation and style.

#### Amendments

The 1971 amendment substituted "one hundred eighty (180) days prior to the initiation of negotiations for the acquisition of the property" for "one (1) year prior to the first written offer for the acquisition of such property" in subsection (1); increased the maximum payment under subdivision (1)(a) from \$5,000 to

**32-3927. Additional payment for realty with other dwelling—period of occupancy—amount.** (a) In addition to the payment authorized by section 32-3925, as a part of the cost of construction, the department may make a payment to an individual or family displaced from a dwelling not eligible to receive a payment under section 32-3926, which dwelling was actually and lawfully occupied by the individual or family for not less than ninety (90) days prior to the first written offer for the acquisition of the property.

(b) The payment, not to exceed four thousand dollars (\$4,000), shall be the additional amount which is necessary to enable the individual or family to lease or rent for a period not to exceed four (4) years, or to make the down payment on the purchase of a decent, safe and sanitary dwelling of standards adequate to accommodate the individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities, except that if the amount of the down payment to purchase exceeds two thousand dollars (\$2,000), the individual or family must equally match the amount in excess of two thousand dollars (\$2,000) in making the down payment.

History: En. Sec. 7, Ch. 212, L. 1969; amd. Sec. 4, Ch. 426, L. 1971; amd. Sec. 144, Ch. 316, L. 1974.

period specified in subsection (b) from two to four years; added the exception to subsection (b); and made minor changes in style.

The 1974 amendment substituted "department" for "commission" in subsection (1); and made minor changes in phraseology.

#### Amendments

The 1971 amendment increased the maximum payment under subsection (b) from \$1,500 to \$4,000; increased the rental

**32-3928. Review of application for assistance—highway commission's decision final.** A displaced person aggrieved by a determination as to eligibility for a payment authorized by sections 32-3925 through 32-3927,



or the amount of a payment, may have his application reviewed by the commission, whose decision shall be final.

**History:** En. Sec. 8, Ch. 212, L. 1969; amd. Sec. 145, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "sec-

tions 32-3925 through 32-3927" for "this act"; substituted "commission" for "highway commission"; and made a minor change in phraseology.

**32-3929. Rules.** The department may adopt rules to implement sections 32-3923 through 32-3931, including rules to implement the payment of expenses authorized by sections 32-3925 through 32-3927, and other rules relating to highway relocation assistance which are necessary or desirable under federal laws and rules. The department's rules shall include provisions relating to:

(a) A moving expense allowance, as provided in subsection (b) of section 32-3925, for a displaced person who moves from a dwelling, determined according to a schedule, not to exceed three hundred dollars (\$300);

(b) The conditions for decent, safe, and sanitary dwellings;

(c) Procedure for an aggrieved displaced person to have his determination of eligibility or amount of payment reviewed by the commission; and

(d) Eligibility of displaced persons for relocation assistance payments, the procedure for those persons to claim the payments, and the amounts of the payments.

**History:** En. Sec. 9, Ch. 212, L. 1969; amd. Sec. 5, Ch. 426, L. 1971; amd. Sec. 146, Ch. 316, L. 1974.

#### Amendments

The 1971 amendment increased the limit on moving expense allowance under subdivision (a) from \$200 to \$300; substituted "conditions" for "standards" in subdivision (b); and made a minor change in style.

The 1974 amendment substituted "The department may adopt \* \* \* through 32-

3927" at the beginning of the section for "The commission is authorized to adopt rules and regulations to implement this act"; substituted "The department's rules" in the second sentence for "Such rules"; and made minor changes in phraseology and style.

#### Effective Date

Section 6 of Ch. 426, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 18, 1971.

**32-3930. Assistance payments not income for state tax purposes.** A payment received by a displaced person under sections 32-3923 through 32-3929 may not be considered as income for Montana state income tax purposes.

**History:** En. Sec. 10, Ch. 212, L. 1969; amd. Sec. 147, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "under

sections 32-3923 through 32-3929" for "under this article"; and made a minor change in phraseology.

**32-3931. No new element of condemnation damages created.** Nothing in sections 32-3923 through 32-3931 creates in a condemnation proceeding brought under the power of eminent domain an element of damages not in existence on July 1, 1969.

**History:** En. Sec. 11, Ch. 212, L. 1969; amd. Sec. 148, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "in sections 32-3923 through 32-3931" for "in

this act" at the beginning of the section; substituted "on July 1, 1969" for "on the date of enactment of this act" at the end

of the section; and made minor changes in phraseology.

## CHAPTER 40—ACQUISITION AND DISPOSITION OF PROPERTY BY COUNTY

- Section 32-4001. Rights of way for county roads.  
 32-4002. Petition by freeholders to establish, change, abandon, or discontinue a county road.  
 32-4003. Contents of petition.  
 32-4004. Investigation of petition—notice.  
 32-4005. Opening of road—survey.  
 32-4006. Determination of damages—declaration as road.  
 32-4007. Award of damages deemed rejected—proceedings to secure right of way.  
 32-4008. Damages and expenses to be paid out of county road fund.  
 32-4009. Change of road upon petition.  
 32-4010. Notice to district supervisor of opening of county road.  
 32-4011. Record of opening or changing road.  
 32-4012. Deeds and judgments for right of way—recording.  
 32-4013. County road crossing railroad, canal or ditch.  
 32-4014. Abandonment or vacation of county roads.  
 32-4015. Stock lanes.  
 32-4016. Board to transfer responsibility for right of way.  
 32-4017. Acquisition of property for public ferries and wharves.  
 32-4018. Acquisition of property for controlled access facility.

**32-4001. Rights of way for county roads.** (1) Each board shall acquire rights of way for county roads and discontinue or abandon them only upon proper petition therefor.

(2) By taking or accepting interests in real property for county roads, the public acquires only the right of way and the incidents necessary to enjoying and maintaining it.

**History:** En. Sec. 8-201, Ch. 197, L. 1965.

### Sewer Easement

County possesses sufficient interest in right of way for county road created by common-law dedication, to grant permission, without adjoining property owners' consent, for installation of municipal sewer under the road even if adjoining property owners are not allowed to connect with the sewer line. *Bolinger v. City of Bozeman*, 158 M 507, 493 P 2d 1062.

### Compiler's Note

This chapter was designated as Part 2 of Chapter 8 of the Highway Code, entitled "Acquisition and Disposition by County."

**32-4002. Petition by freeholders to establish, change, abandon, or discontinue a county road.** Any ten, or a majority, of the freeholders of a road district, taxable therein for road purposes, may petition the board in writing to open, establish, construct, change, abandon, or discontinue any county road in the district. If the county is not divided into districts the entire county shall be one road district. When the road petitioned for is on the dividing line between two counties, the same procedure must be followed, except that a copy of the petition must be presented to each board. The two boards shall act jointly.

**History:** En. Sec. 8-202, Ch. 197, L. 1965.

**32-4003. Contents of petition.** The petition must set forth: (1) The particular road or roads to be opened, established, constructed, changed, discontinued, or abandoned.

(2) The general route thereof.

(3) The lands and owners affected.

(4) Whether the owners who can be found consent thereto.

(5) Where consent is not given, the probable cost of the right of way.

(6) The necessity for, and advantage of, the petitioned action.

**History:** En. Sec. 8-203, Ch. 197, L. 1965.

**32-4004. Investigation of petition—notice.** (1) At its next regular or special meeting, or in any case, at a date within thirty (30) days after filing of any petition, the board shall cause an investigation to be made of the feasibility, desirability, and cost of granting the prayer of the petition. The investigation shall be sufficient to properly determine the merits or demerits of the petition.

(2) No more than one member of the board and the county surveyor shall make the investigation. After considering the petition and the results of the investigation, the board shall make an entry of its decision on the minutes.

(3) Within ten (10) days thereafter, the board shall cause notice of its decision to be sent by certified mail to all owners of land abutting on the road petitioned for. The owners shall be those listed on the last county assessment roll.

**History:** En. Sec. 8-204, Ch. 197, L. 1965.

**32-4005. Opening of road—survey.** If the petition is for the opening of a county road, and the board grants the prayer, ordering the road opened, it shall proceed at once to have it opened to the public and declare it to be a county road. The board may order the county surveyor, or some other competent surveyor, if the county surveyor is incompetent to survey and plat the road. He shall file his fieldnotes with the county clerk and recorder. The surveyor shall receive seven dollars (\$7) per day and actual traveling expenses.

**History:** En. Sec. 8-205, Ch. 197, L. 1965.

**32-4006. Determination of damages—declaration as road.** (1) Whenever the board makes an order establishing or changing any road, it must find the amount of damages sustained by each owner or claimant of lands or improvements thereon affected by the road. Damages shall be paid to the owner or claimant, if known, upon his showing or establishing his right or title to the lands or improvements and furnishing proper deeds and releases.

(2) Damages must be determined by estimating the benefits and damages accruing. The sum estimated as benefits must be deducted



from the sum estimated as damages, and the remainder, if any, shall be the amount of damages awarded.

(3) If all awards are accepted, the board shall declare the road a county road and open it.

History: En. Sec. 8-206, Ch. 197, L. 1965.

**32-4007. Award of damages deemed rejected—proceedings to secure right of way.** (1) If any award of damages provided for in section 8-206 [32-4006] is not accepted within twenty (20) days after the date of the award, it shall be deemed rejected by the owner. The board shall, by order, direct that proceedings to procure the right of way be instituted under sections 93-9901—93-9926 by the county attorney against all nonaccepting landowners.

(2) Such proceedings shall in no way be affected or invalidated by the failure of the board to give any notice or do any act provided for in this part [chapter]. Failure to give any such notice shall not be considered by any court as a defense in any proceedings for procuring right of way.

(3) However, in such proceedings it shall be made to appear that the board shall have declared by resolution that the right of way was necessary and desirable.

History: En. Sec. 8-207, Ch. 197, L. 1965.

**32-4008. Damages and expenses to be paid out of county road fund.** All awards of damages estimated by the board or made by the proper court and all expenses, including those of the members of the board and their per diem authorized by section 16-912, shall be paid out of the county road fund on the order of the board.

History: En. Sec. 8-208, Ch. 197, L. 1965.

**32-4009. Change of road upon petition.** (1) A majority of the freeholders or owners residing on any county road, or portion thereof, may petition the board in writing to so change the road or portion as to run on subdivision or section lines.

(2) The board shall investigate in the same manner as provided in section 8-204 [32-4004]. After investigation, the board may order the making of the change if it can be done without material damage, injury, or serious inconvenience to the public customarily using the road or portion.

(3) Those petitioning for the change shall bear all or such portion of the cost and expense of making it as the board may order.

History: En. Sec. 8-209, Ch. 197, L. 1965.

**32-4010. Notice to district supervisor of opening of county road.** When a county road is to be opened, established, constructed, changed,

abandoned, or discontinued, the county clerk shall notify the supervisor of the proper district and furnish him with a certified copy of the order of the board.

History: En. Sec. 8-210, Ch. 197, L.  
1965.

**32-4011. Record of opening or changing road.** When a county road is opened or changed, the findings of the board, the plat fieldnotes, and the report of the surveyor shall be recorded in the office of the county clerk in a book kept for that purpose.

History: En. Sec. 8-211, Ch. 197, L.  
1965.

**32-4012. Deeds and judgments for right of way—recording.** (1) When a right of way is voluntarily given or purchased, an instrument in writing, conveying the right of way and incidents thereto, must be signed and acknowledged by the person making it. It must then be recorded in the office of the clerk of the county where the land is located.

(2) When a right of way is condemned, a certified copy of the judgment of the court must be made. It must then be filed in the office of the clerk of the county where the land is located.

(3) Both types of instruments shall particularly describe the land.

History: En. Sec. 8-212, Ch. 197, L.  
1965.

**32-4013. County road crossing railroad, canal or ditch.** (1) Whenever any county road is laid out on public lands across any railroad, canal, or ditch, the owners or users thereof must at their expense, so prepare the railroad, canal, or ditch that the road may cross it without damage or delay.

(2) When the right to cross is obtained through the judgment of any court, no damages shall be awarded.

History: En. Sec. 8-213, Ch. 197, L.  
1965.

**32-4014. Abandonment or vacation of county roads.** All county roads once established must continue to be county roads until abandoned or vacated by operation of law, or by judgment of a court of competent jurisdiction, or by the order of the board. No order to abandon any county road shall be valid unless preceded by notice and public hearing.

History: En. Sec. 8-214, Ch. 197, L.  
1965.

**32-4015. Stock lanes.** [1] Upon presentation of a proper petition, each board may establish, alter, or vacate stock lanes when it deems it expedient and necessary for the convenience of the public and for the convenience of travel on roads now established. Any lane may adjoin and parallel a county road and shall be described in the petition for creation and in the order of the board creating it.

(2) A stock lane is a county road established and maintained for the driving and travel of livestock. It shall be not less than sixty (60) feet wide. The width shall be determined by the board in the order creating it.

(3) The provisions of sections 8-201—8-214 of this part [32-4001 to 32-4014 of this chapter] and the general laws relating to establishing, altering, and vacating county roads including the exercise of the right of eminent domain shall apply to stock lanes. References in all petitions, orders, and proceedings shall be to "stock lanes" in order to differentiate them from other highways.

**History:** En. Sec. 8-215, Ch. 197, L. 1965.

**Compiler's Note**

The compiler has inserted the bracketed designation for subsection (1).

**32-4016. Board to transfer responsibility for right of way.** A board shall transfer its control over, and responsibility for, a county road when the department of highways notifies it that:

(1) A federal or state highway has been established and definitely located over a county road.

(2) Funds are available for immediate construction of the highway.

(3) The highway will be improved and maintained by the department.

**History:** En. Sec. 8-216, Ch. 197, L. 1965; amd. Sec. 149, Ch. 316, L. 1974.

partment of highways" for "commission" in the first sentence; substituted "department" for "commission" in subdivision (3); and made minor changes in phraseology.

**Amendments**

The 1974 amendment substituted "de-

**32-4017. Acquisition of property for public ferries and wharves.** (1) Upon the proper showing, as provided in section 16-1116, each board may construct or acquire ferries by condemnation or purchase. Each board may also acquire all the necessary boats, grounds, roads, approaches, landings, and improvements pertaining to the ferry.

(2) Each board may acquire real property for these purposes under the provisions of sections 93-9901—93-9926.

(3) No board shall establish or maintain a county ferry or wharf with a landing-place in any incorporated city or town which, by its charter, is vested with the power to build and regulate ferries, wharves, or landings at the feet of streets terminating at a river or harbor.

**History:** En. Sec. 8-217, Ch. 197, L. 1965.

**32-4018. Acquisition of property for controlled access facility.** The highway authorities of the state, counties, incorporated cities, and towns, respectively or in co-operation each with the other, may acquire private or public property and property rights for controlled access highways or controlled access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired by gift, devise, purchase, or condemnation, in the same manner as may



now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

**History:** En. Sec. 8-218, Ch. 197, L. 1965.

#### CHAPTER 41—CONTRACTS OF STATE HIGHWAY COMMISSION

Section 32-4101. Letting of contracts on state and federal-aid highways.

32-4102. Competitive bidding.

32-4103. Bidder's security—contractor's bond.

**32-4101. Letting of contracts on state and federal-aid highways.** All contracts for work on state and federal-aid highways, including portions in cities and towns, and all contracts entered into under section 11-1023 shall be let by the commission. Except as otherwise specifically provided, the commission may enter such types of contracts and upon such terms as it may decide. All contracts shall meet the requirements of sections 41-701—41-703. When there is no prevailing rate of wages set by collective bargaining, the commission shall determine the prevailing rate to be stated in the contract.

**History:** En. Sec. 9-101, Ch. 197, L. 1965.

designated as Chapter 9 of the Highway Code, entitled "Contracts." This chapter was designated as Part 1 of Chapter 9, entitled "Contracts of Commission."

#### **Compiler's Note**

Chapters 41 and 42 of this title were

**32-4102. Competitive bidding.** (1) When the estimated cost of any work exceeds one thousand dollars (\$1,000), the commission shall let the contract by competitive bidding. Award shall be made upon such notice and upon such terms as the commission may prescribe by its rules and regulations. However, except when prohibited by federal law, the commission must make awards and contracts in accordance with the provisions of sections 82-1924 and 82-1926.

(2) If the commission finds that the work may be done in some more efficient manner, it need not let the contract by competitive bidding.

(3) If, on highway construction work financed in whole or in part by federal funds, the United States secretary of transportation affirmatively finds that under the circumstances relating to a particular project some method other than competitive bidding is in the public interest, the commission may enter into contracts with a board of county commissioners. These contracts may authorize each county to acquire rights of way for, survey, and construct farm to market, secondary, or feeder roads within the county by force account, unit price, or otherwise, as may be agreed by the commission and the board.

(4) If, on any highway construction work financed in whole or in part by federal funds the commission finds that enforcement of the provisions contained in sections 84-3507 and 82-1927, relating to public contractors working beyond contract time will result in a reduction in the full benefits of the Federal Highway Act of 1921 and all amendments thereto, it may waive enforcement of such provisions.

**History:** En. Sec. 9-102, Ch. 197, L. 1965; amd. Sec. 1, Ch. 278, L. 1974; amd. Sec. 150, Ch. 316, L. 1974.

a composite section embodying the changes made by both amendments.

**Amendments**

Chapter 278, Laws of 1974, added subsection (4).

Chapter 316, Laws of 1974, substituted "United States secretary of transportation" for "United States secretary of commerce" in the first sentence of subsection (3) and made minor changes in phraseology.

**Compiler's Notes**

This section was amended twice in 1974, once by Ch. 278 and once by Ch. 316. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made

**32-4103. Bidder's security—contractor's bond.** (1) Whenever the commission calls for competitive bidding, each bidder shall meet all requirements of section 6-501 [R. C. M., 1947].

(2) Every contractor awarded a contract by the commission shall meet all requirements set forth in sections 6-401—6-404 [R. C. M., 1947]. For the purposes of those sections with relation to contracts with the commission, a contract shall not be completed until the commission, while formally convened, affirmatively accepts all of the work thereunder.

**History:** En. Sec. 9-103, Ch. 197, L. 1965.

**Compiler's Note**

The compiler has inserted the bracketed references to R. C. M., 1947.

**CHAPTER 42—CONTRACTS OF COUNTIES AND LOCAL IMPROVEMENT DISTRICTS**

**Section 32-4201. Contracts for county roads.**

32-4202. Bids on county road contracts—award of contract.

32-4203. County road contractors to furnish bonds.

32-4204. Letting of contract for bridge.

32-4205. Letting of contract by local improvement district—bids.

32-4206. Improvement district contract—award.

32-4207. Execution of contract by board—limit on liability.

**32-4201. Contracts for county roads.** (1) When the estimated cost of opening, establishing, constructing, changing, abandoning, discontinuing, or widening a county road exceeds one thousand dollars (\$1,000), the work may, in the discretion of the board, be let by contract, unless the board shall find that such work may be otherwise done at less cost.

(2) Before any such contract shall be let, the board shall advertise for bids at least once a week for two (2) consecutive weeks, in a newspaper of general circulation in the county.

**History:** En. Sec. 9-201, Ch. 197, L. 1965.

of Chapter 9 of the Highway Code, entitled "Contracts of Counties and Local Improvement Districts."

**Compiler's Note**

This chapter was designated as Part 2

**32-4202. Bids on county road contracts—award of contract.** Each bidder shall comply with the requirements of section 6-501 [R. C. M., 1947]. The contract shall be awarded to the lowest responsible bidder in accordance with the requirements of sections 41-701—41-703, 82-1924, and 82-1926, and the board may reserve the right to reject any and all bids. When there is no prevailing rate of wages set by collective bar-

gaining, the board shall determine the prevailing rate to be stated in the contract.

**History:** En. Sec. 9-202, Ch. 197, L. 1965.

**Compiler's Note**

The compiler has inserted the bracketed reference to R. C. M., 1947.

**32-4203. County road contractors to furnish bonds.** Before entering upon performance of the work, the contractor shall comply with the requirements of sections 6-401—6-404 [R. C. M., 1947]. For the purposes of those sections with relation to contracts with the board, a contract shall not be completed until the board, while formally convened, affirmatively accepts all of the work thereunder.

**History:** En. Sec. 9-203, Ch. 197, L. 1965

**32-4204. Letting of contract for bridge.** (1) All bids for construction or repair of bridges shall meet these requirements:

(a) If the department has adopted or established a standard plan and specifications, the bids must be submitted thereon.

(b) All bids must be sealed. Each bidder shall meet the requirements of section 6-501, R. C. M. 1947.

(2) The board may reject any and all bids. If a contract is awarded, the board shall do so in accordance with the requirements of sections 41-701—41-703, 82-1924, and 82-1926. When there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract. The contract must be entered with the unanimous consent of the members of the board.

(3) Before entering upon performance of the work, the contractor shall comply with the requirements of sections 6-401—6-404, R. C. M. 1947. For the purposes of those sections with relation to contracts with the board, a contract shall not be completed until the board, while formally convened, affirmatively accepts all of the work thereunder.

**History:** En. Sec. 9-204, Ch. 197, L. 1965; amd. Sec. 151, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment substituted "department" for "commission" in subdivision (1)(a); and made minor changes in punctuation.

**Compiler's Note**

The compiler has inserted the bracketed references to R. C. M., 1947.

**32-4205. Letting of contract by local improvement district—bids.** (1) After the board has made the order creating and establishing the local improvement district, the local committee of supervisors shall advertise for bids. The advertisement shall state generally the work to be done and shall refer to the plans and specifications. It shall also fix the time for opening bids in the office of the board. Each bidder shall meet the requirements of section 6-501 [R. C. M., 1947].

(2) At that time, the committee shall open all bids. It may reject all of them and readvertise for bids. No contract shall be awarded at a greater sum than the estimate of cost provided for in part 4 of chapter 5 of this code [chapter 31 of this title].

**History:** En. Sec. 9-205, Ch. 197, L. 1965.

**Compiler's Note**

The compiler has inserted the bracketed reference to R. C. M., 1947.



**32-4206. Improvement district contract—award.** (1) If the committee awards a contract, it shall do so in accordance with the requirements of sections 41-701—41-703, 82-1924, and 82-1926. When there is no prevailing rate of wages set by collective bargaining, the committee shall determine the prevailing rate to be stated in the contract.

(2) Before entering upon performance of the contract, the contractor shall comply with the requirements of sections 6-401—6-404 [R. C. M., 1947]. For the purposes of those sections with relation to contracts with the committee, a contract shall not be completed until the committee, while formally convened, affirmatively accepts all of the work thereunder.

(3) Partial payments may be provided for in the contract, and paid when certified by the county surveyor and committee.

**History:** En. Sec. 9-206, Ch. 197, L. 1965.

**Compiler's Note**

The compiler has inserted the bracketed reference to R. C. M., 1947.

**32-4207. Execution of contract by board—limit on liability.** The contract shall be executed in the name of and on behalf of the county by the board and attested with the county seal for the use and benefit of the local improvement district. The county shall not be subject to any claim or liability in an amount greater than that agreed upon with the district in the order fixing the amount chargeable to the county.

**History:** En. Sec. 9-207, Ch. 197, L. 1965.

## CHAPTER 43—CONTROL OF ACCESS

- Section 32-4301. Policy.  
 32-4302. Definitions.  
 32-4303. Designation as controlled access highway—resolution—findings.  
 32-4305. Powers of highway authorities.  
 32-4306. Design of controlled access facility—entrance and exit restricted.  
 32-4307. New and existing facilities—elimination of grade crossings.  
 32-4308. Existing roads and streets as service roads.  
 32-4308.1. Maintenance of frontage roads.  
 32-4309. Marking of controlled access highway or facility with signs.  
 32-4310. Commercial enterprise or structure prohibited.  
 32-4311. Violations—penalties.

**32-4301. Policy.** The legislative assembly declares it to be the policy of this state to facilitate the flow of traffic and promote public safety by controlling access to:

(1) Highways included by the federal highway administration [roads] in the national system of interstate highways.

(2) Throughways and intersections with throughways.

(3) Such other federal-aid and state highways as shall be designated by the commission in accordance with the requirements set forth in this chapter.

**History:** En. Sec. 10-101, Ch. 197, L. 1965; amd. Sec. 152, Ch. 316, L. 1974.

vision (1) were inserted by the compiler to indicate apparent surplusage.

**Compiler's Notes**

This chapter was designated as Chapter 10 of the Highway Code, entitled "Control of Access."

The brackets around "roads" in subdivi-

**Amendments**

The 1974 amendment substituted "federal highway administration" for "bureau of public roads" in subdivision (1); and made a minor change in style.

## DECISIONS UNDER FORMER LAW

**Judicial Determination of Necessity**

In adopting the former controlled access highway law (32-2001 et seq.) the legislature is presumed to have considered sections 93-9905 and 93-9911 R. C. M.

1947, and the power to determine the public necessity of a proposed highway or facility remains with the trial judge. *State Highway Commission v. Yost Farm Co.*, 142 M 239, 384 P 2d 277.

**32-4302. Definitions.** When used in this chapter:

(1) "Interstate highway" means a highway included as a part of the national system of interstate highways.

(2) "Controlled access highway" means those portions of an interstate highway, throughway, or throughway intersection which the commission designates for through traffic, or other federal-aid or state highway over, from or to which owners or occupants of abutting land or other persons have no easement of access or only a limited easement of access, light, air, or view. It also means those portions of spurs to the interstate highway system which the commission designates as unsafe or impeded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage.

(3) "Controlled access facility" means and includes streets, alleys, public roads, private roads, and ways of passage intersecting a controlled access highway and real property contiguous to the right of way of a controlled access highway.

(4) "Existing highway" means and includes highways, roads, and streets established, constructed, and in use on March 2, 1955. It does not include highways, roads, or streets, established, constructed, and in use after that date, or highways, roads, or streets, or portions thereof relocated after that date.

(5) "Arterial highway" means a state highway designated by agreement between the commission and the secretary of transportation as part of the federal-aid primary system and any highway so designated as a part of the federal-aid secondary system which has been constructed and is being used primarily for through traffic on a continuous route.

(6) "Throughway" means a portion of an arterial highway constructed and used for carrying traffic partially or entirely around a town or city or a portion thereof.

(7) "Throughway intersection area" means an area within a radius of three hundred (300) feet from the point of intersection of the center lines of a throughway and a public road, street, or highway.

(8) "Highway authorities" or "authority" means the entities in state, county, and municipal governments which have authority to construct, repair, and maintain highways, roads, and streets.

History: En. Sec. 10-102, Ch. 197, L. 1965; amd. Sec. 153, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment substituted "sec-

retary of transportation" for "secretary of commerce" in subdivision (5); and made minor changes in phraseology and style.

**32-4303. Designation as controlled access highway—resolution—findings.** (1) No portion of any interstate highway, throughway or throughway intersection, or other federal-aid or state highway shall be designated as a controlled access highway unless the commission shall adopt a reso-

lution so designating it. The resolution shall be adopted by the majority vote of the members in attendance at any regular or special meeting. In it, the commission shall find and determine:

(a) That it is necessary and desirable that the owners or occupants of the abutting land or other persons shall have no easement of access or only a limited easement of access, light, air, or view.

(b) That it is necessary and desirable that the rights of, or easements to access, light, air, or view be acquired by the state so as to prevent such portion of highway from becoming unsafe for or impeded by unrestricted access of traffic from intersecting streets, alleys, public or private roads or ways of passage.

(2) The resolution shall contain a statement of the reasons for its adoption, and shall set forth the location, distance, and termini of the portion of the highway designated as a controlled access highway.

**History:** En. Sec. 10-103, Ch. 197, L. 1965; amd. Sec. 1, Ch. 215, L. 1969.

#### Amendments

The 1969 amendment deleted former subsection (2) which read, "The require-

ment by the United States that access must be controlled shall be a basis of necessity for the passing of the resolution" and renumbered former subsection (3) as subsection (2).

### 32-4304. Repealed.

#### Repeal

Section 32-4304 (Sec. 10-104, Ch. 197, L. 1965), prohibiting the designation of a controlled access highway without a

written petition from the municipal or county governing body, was repealed by Sec. 2, Ch. 436, Laws 1973. For new law, see sec. 32-4305 (2).

**32-4305. Powers of highway authorities.** (1) Those authorities of the state, counties, and municipalities authorized to participate in construction and maintenance of highways may plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled access facilities for public use. Each such authority shall, by resolution, make the findings and determinations provided for in section 10-103 [32-4303] of this chapter.

(2) Within incorporated cities and towns, and upon county roads or secondary highways, the department of highways shall not control access without the consent of the appropriate governing body.

(3) Each authority may also exercise, with relation to controlled access facilities, any and all additional authority now or hereafter vested in it over highways, roads, or streets within its respective jurisdiction. It may regulate, restrict, or prohibit the use of controlled access facilities by any vehicles or traffic.

**History:** En. Sec. 10-105, Ch. 197, L. 1965; amd. Sec. 1, Ch. 436, L. 1973.

sent" in subsection (2) for "each authority shall be subject to the consent."

#### Amendments

The 1973 amendment inserted "or secondary highways" in subsection (2); and substituted "the department of highways shall not control access without the con-

#### Repealing Clause

Section 2 of Ch. 436, Laws 1973 read "Section 32-4304, R. C. M. 1947, is repealed."

**32-4306. Design of controlled access facility—entrance and exit restricted.** (1) Each highway authority may so design any controlled



access facility and so regulate, restrict, or prohibit access as to best serve the traffic for which the facility is intended. In so doing, it may divide and separate any controlled access facility into separate roadways by the construction of raised curbsings, central dividing sections, or other physical separations, or by designating the separate roadways by signs, markers, stripes, and other devices.

(2) No person shall have any right to enter upon, exit from, or cross any controlled access facility except at designated points at which access may be permitted. Terms and conditions governing such access may be specified from time to time.

**History:** En. Sec. 10-106, Ch. 197, L. 1965.

**32-4307. New and existing facilities—elimination of grade crossings.**

(1) Each highway authority may provide for elimination of intersections at grade of controlled access highways or controlled access facilities with existing federal-aid and state highways, county roads, and city or town streets. Elimination shall be accomplished at the boundary of the controlled access right of way.

(2) After the establishment of any controlled access highway or facility, no private or public highway or street which is not a part of the highway or facility shall intersect it at grade. No street, road, highway, or other public way shall be opened into or connected with any controlled access highway or facility without the prior consent and approval of the appropriate highway authority.

(3) The commission may, whenever it determines that the public safety is not thereby impaired, authorize the continued intersection at grade of lightly traveled farm entrances and minor public roads as ways of access to controlled access highways in sparsely populated rural areas. The commission shall have sole jurisdiction to determine the existence and location of any intersection with interstate highways, throughways and other federal-aid and state highways.

**History:** En. Sec. 10-107, Ch. 197, L. 1965.

**32-4308. Existing roads and streets as service roads.** (1) In connection with the development of any controlled access highway or facility, each highway authority may plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets. Each authority may designate as local service roads and streets any existing road or street.

(2) Service roads and streets shall be of appropriate design. They shall be separated from the controlled access highway or facility by means of all devices determined to be necessary to carry out the provisions of this chapter.

(3) Each authority shall exercise jurisdiction over service roads and streets in the same manner as is authorized over controlled access highways or facilities.

**History:** En. Sec. 10-108, Ch. 197, L. 1965.

**32-4308.1. Maintenance of frontage roads.** Frontage roads shall be maintained by the department of highways.

**History:** En. Sec. 1, Ch. 90, L. 1965; amd. Sec. 154, Ch. 316, L. 1974.

frontage roads and amending section 32-2002 to define "frontage road."

#### Compiler's Notes

This section was assigned inadvertently to Chapter 20 of Title 32 prior to repeal of Chapter 20 by Sec. 12-109, Ch. 197, L. 1965.

#### Amendments

The 1974 amendment substituted "department of highways" for "state highway commission of the state of Montana"; and made a minor change in phraseology.

#### Title of Act

An act to provide for maintenance of

**32-4309. Marking of controlled access highway or facility with signs.** Any controlled access highway or facility and portions thereof shall be physically marked by signs indicating to drivers of vehicles the points at which they enter and leave a controlled access area.

**History:** En. Sec. 10-109, Ch. 197, L. 1965.

**32-4310. Commercial enterprise or structure prohibited.** No commercial enterprise or structure shall be constructed or operated on the publicly owned right of way of a controlled access highway or facility or on any publicly leased land used in connection therewith.

**History:** En. Sec. 10-110, Ch. 197, L. 1965.

**32-4311. Violations—penalties.** (1) On any controlled access highway or facility it is unlawful for any person to:

(a) Drive a vehicle over, upon, or across any curb, central dividing section, or other separation or dividing line.

(b) Make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb, section, separation, or line.

(c) Drive any vehicle except in the proper lane, in the proper direction, and to the right of the central dividing curb, separation, section or line.

(d) Drive any vehicle from a local service road except through an opening provided for that purpose in the dividing curb, section, or line which separates the service road from the highway or facility.

(e) Construct, operate, or maintain any road or private driveway connecting with the highway or facility without first obtaining permission in writing from the highway authority having jurisdiction and, with the exception of an interstate highway, from the local governing body.

(2) Any person who violates any of the provisions of this section is guilty of a misdemeanor. Upon arrest and conviction therefor, he shall be punished by a fine of not less than five dollars (\$5) nor more than one hundred dollars (\$100), or by imprisonment in the city or county

jail for not less than five (5) days nor more than ninety (90) days, or by both fine and imprisonment.

**History:** En. Sec. 10-111, Ch. 197, L. 1965.

#### CHAPTER 44—GOOD ROADS DAY—OBSTRUCTIONS, ENCROACHMENTS AND DEBRIS ON HIGHWAYS

- Section 32-4401. Good Roads day.  
 32-4403. Excavations across highways—permits and bridging.  
 32-4404. Liability for permitting water to overflow.  
 32-4405. Highway encroachments—power to remove.  
 32-4406. Notice to remove encroachment.  
 32-4407. Penalty for failure to remove encroachment promptly.  
 32-4408. Removal of encroachment—actions—prosecution of offenses.  
 32-4409. Prosecution by county attorney.  
 32-4410. Dumping garbage or other debris or refuse.

**32-4401. Good Roads day.** The third Tuesday in June is hereby designated "Good Roads day." The governor may annually, by public proclamation, request the people of the state to contribute toward the improvement and safety of public highways.

**History:** En. Sec. 11-101, Ch. 197, L. 1965.

#### Compiler's Note

This chapter was designated as Chapter 11 of the Highway Code, entitled "Miscellaneous."

#### 34-4402. Repealed.

##### Repeal

Section 32-4402 (Sec. 11-102, Ch. 197, L. 1965), relating to injuries to highways

and trees, was repealed by Sec. 209, Ch. 316, Laws of 1974.

**32-4403. Excavations across highways—permits and bridging. (1)**  
 (a) Any person contemplating the excavation or construction of any ditch, dike, flume or canal across a public highway shall obtain a written permit from the board of county commissioners, road supervisor or county surveyor of said district before beginning construction or excavation.

(b) Any person obtaining said written permit shall bridge at once, in accordance with plans and specifications furnished by the board of county commissioners.

(2) Any such bridge shall be maintained by the county.

(3) Any person obtaining a construction permit or any person using the water of such ditch, dike, flume or canal shall keep the same in repair where such water may flow over or in any way injure a public highway.

**History:** En. Sec. 11-103, Ch. 197, L. 1965.

**32-4404. Liability for permitting water to overflow. (1)** Every person who excavates or constructs or owns any ditch, dike, flume or canal, or stores, distributes or uses water for any purpose and permits the water



to flow over any public highway to the injury thereof, must upon notification by the board of county commissioners, road supervisor or county surveyor of the district where such overflow occurred, repair the damages occasioned. If such repairs are not made within a reasonable time, the district must make them and recover the expense thereof in an action at law.

(2) Every person constructing, owning or using such ditch or flume who permits an overflow is liable as provided in section 94-3565.

**History:** En. Sec. 11-104, Ch. 197, L. 1965. of subsection (2), was repealed by Sec. 32, Ch. 513, Laws 1973, effective January 1, 1974.

**Compiler's Notes**

Section 94-3565, referred to at the end

**32-4405. Highway encroachments—power to remove.** (1) If any highway is encroached upon by fence, building, or otherwise, the road supervisor or county surveyor of the district must give notice, orally or in writing, requiring the encroachment to be removed from the highway.

(2) If the encroachment obstructs and prevents the use of the highway for vehicles, the road supervisor or county surveyor must immediately remove the same.

(3) The board of county commissioners may at any time order the road supervisor or county surveyor to immediately remove any encroachment.

**History:** En. Sec. 11-105, Ch. 197, L. 1965.

**32-4406. Notice to remove encroachment.** (1) Notice to remove the encroachment immediately, specifying the breadth of the highway and the place and extent of the encroachment, must be given to the occupant or owner of the land or person owning or causing the encroachment.

(2) Notice must be given in the following manner:

(a) By leaving it at his place of residence if such person resides in the county; or

(b) By posting it on the encroachment, if such person does not reside in the county.

**History:** En. Sec. 11-106, Ch. 197, L. 1965.

**32-4407. Penalty for failure to remove encroachment promptly.** If the encroachment is not removed immediately, or removal is not diligently conducted, the one who causes, owns, or controls the encroachment is liable to a penalty of ten dollars (\$10) for each day the same continues.

**History:** En. Sec. 11-107, Ch. 197, L. 1965.

**32-4408. Removal of encroachment—actions—prosecution of offenses.** (1) If the encroachment is denied, the road supervisor shall commence

in the proper court an action to abate the same as a nuisance. If he recovers judgment, he may have his costs and ten dollars (\$10) for every day such nuisance remained after notice.

(2) If the encroachment is not denied, and is not removed for five (5) days after notice is complete, the road supervisor or county surveyor may remove it at the expense of the owner or occupant of land, or of the person owning or controlling the encroachment. He may recover the expense of removal, ten dollars (\$10) for each day the encroachment remained after notice, and costs in an action brought for that purpose.

**History:** En. Sec. 11-108, Ch. 197, L. 1965.

**32-4409. Prosecution by county attorney.** The county attorney, upon complaint of the road supervisor, county surveyor, or any other person, shall prosecute all actions heretofore provided in the name of the state of Montana. All penalties shall be paid into the general fund of the county.

**History:** En. Sec. 11-109, Ch. 197, L. 1965.

**32-4410. Dumping garbage or other debris or refuse.** (1) It shall be unlawful to dump or leave any garbage, dead animal, or other debris or refuse:

(a) In or upon any highway, road, street, or alley of this state.

(b) In or upon any public recreational property, highway, street, or alley under the control of the state of Montana or any political subdivision thereof, or any officer or agent or department thereof.

(c) Within two hundred yards of such public highway, road, street, or alley, or public recreational property.

(d) On privately owned property where hunting, fishing or other recreation is permitted, provided this subsection shall not apply to the owner, his agents or those disposing of debris or refuse with the owner's consent.

(2) Any person found guilty of a violation of this section shall be fined in the sum not exceeding one hundred dollars (\$100), or imprisoned in the county jail for a period not exceeding thirty (30) days, or be punished by both such fine and imprisonment, in the discretion of the court.

(3) The provisions of this section shall be enforced by all highway patrolmen, sheriffs, policemen, and all other enforcement agencies and officers of the state of Montana. In addition, game wardens shall have the right to enforce the provisions of this section on public recreational property and on private property where public recreation is permitted.

**History:** En. Sec. 11-110, Ch. 197, L. 1965; amd. Sec. 1, Ch. 112, L. 1969.

#### **Amendments**

The 1969 amendment added subdivision (d) to subsection (1); in subsection (2)

increased the maximum fine from \$25.00 to \$100.00; and, in subsection (3), authorized game wardens to enforce anti-littering provisions on private property where public recreation is permitted, as well as on public recreational property.

## CHAPTER 45—JUNKYARDS ALONG ROADS

## Section 32-4513. Purposes of act.

32-4514. Definitions.

32-4515. License required.

32-4516. Issuance of license.

32-4517. Restrictions as to location.

32-4518. Junkyards lawfully in existence.

32-4519. Regulations governing screening.

32-4520. Authority to acquire interest in land for screening and removal of junkyards.

32-4521. Injunction.

32-4522. Agreements with the United States.

32-4523. Interpretation.

## 32-4501 to 32-4512. Repealed.

## Repeal

junkyards along roads, were repealed by

These sections (Secs. 1 to 12, Ch. 136, L. 1965), relating to the regulation of

Sec. 13, Ch. 285, Laws 1967.

32-4513. Purposes of act. (1) For the purposes of promoting the public safety, health and welfare, and the convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is hereby declared to be in the public interest to regulate and restrict the establishment, operation and maintenance of junkyards in areas adjacent to the interstate and primary systems within this state.

(2) The legislative assembly hereby finds and declares that junkyards which do not conform to the requirements of this act are public nuisances.

History: En. Sec. 1, Ch. 285, L. 1967.

## Title of Act

An act providing for the control of junkyards; setting forth definition; restricting location along certain highways; requiring an annual license and fee; re-

quiring certain junkyards to be obscured by means of natural objects or fences; providing authority to purchase or condemn in certain situations; providing penalties for violation; and repealing sections 32-4501 through 32-4512, Revised Codes of Montana, 1947.

## 32-4514. Definitions. As used in this act only:

(1) "Interstate system" means that portion of the national system of interstate and defense highways located within this state, as officially designated, or as may hereafter be so designated by the state highway commission and approved by the secretary of transportation pursuant to the provisions of title 23, United States Code, "Highways."

(2) "Primary system" means that portion of connected main highways, as officially designated, or as may hereafter be so designated, by the commission and approved by the secretary of transportation, pursuant to the provisions of title 23, United States Code, "Highways."

(3) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel and other old or scrap ferrous or nonferrous material.

(4) "Junkyard" means any establishment or place of business which is maintained, operated or used for storing, keeping, buying or selling



junk; or for the maintenance or operation of an automobile graveyard; or a garbage dump or sanitary fill.

(5) "Automobile graveyard" means any establishment or place of business which is maintained, used or operated for storing, keeping, buying or selling wrecked, scrapped, ruined or dismantled motor vehicles or motor vehicle parts.

**History:** En. Sec. 2, Ch. 285, L. 1967.

**32-4515. License required.** No person shall establish, operate or maintain a junkyard, any portion of which is within one thousand (1,000) feet of the nearest edge of the right of way of any interstate or primary highway, without obtaining a license.

**History:** En. Sec. 3, Ch. 285, L. 1967;  
amd. Sec. 12, Ch. 410, L. 1973.

#### Amendments

The 1973 amendment deleted "from the commission" from the end of the section.

**32-4516. Issuance of license.** The department of health and environmental sciences, with the concurrence of the department of highways shall have the authority to issue licenses for the establishment, maintenance and operation of junkyards within the limits herein defined.

**History:** En. Sec. 4, Ch. 285, L. 1967;  
amd. Sec. 13, Ch. 410, L. 1973.

deleted "sole" before "authority"; and deleted the last four sentences, relating to license fees and expiration date.

#### Amendments

The 1973 amendment substituted "department of health and environmental sciences, with the concurrence of the department of highways" for "commission";

#### Effective Date

Section 14 of Ch. 410, Laws 1973 read "This act is effective July 1, 1973."

**32-4517. Restrictions as to location.** No license shall be granted for the establishment, maintenance or operation of a junkyard within one thousand (1,000) feet of the nearest edge of the right of way of any highway on the interstate or primary systems except the following:

(1) Those which are screened by natural objects, planting, fences or other appropriate means so as not to be visible from the main traveled way of any such highway, or otherwise removed from sight.

(2) Those located within areas which are zoned for industrial use under authority of law.

(3) Those located within unzoned industrial areas, which areas shall be determined from actual land uses and defined by regulations to be promulgated by the commission.

(4) Those which are not visible from the main traveled way of any such highway.

**History:** En. Sec. 5, Ch. 285, L. 1967.

**32-4518. Junkyards lawfully in existence.** (1) A junkyard lawfully in existence on July 1, 1967, which is within one thousand (1,000) feet of the nearest edge of the right of way and visible from the main traveled way of a highway on the interstate or primary systems shall be fenced or screened, if feasible, by the department of highways at locations on the highway right of way or in areas acquired for these purposes outside the

right of way so as not to be visible from the main traveled way of the highway.

(2) Notwithstanding any other provision of this act, a junkyard lawfully in existence on October 22, 1965, which does not conform to the requirements of this act and which the United States secretary of transportation finds as a practical matter cannot be screened, is not required to be removed until July 1, 1970.

**History:** En. Sec. 6, Ch. 285, L. 1967; amd. Sec. 155, Ch. 316, L. 1974.

July 1, 1967" for "on the effective date of this act" in subsection (1); substituted "department of highways" for "commission" in subsection (1); and made minor changes in phraseology.

**Amendments**

The 1974 amendment substituted "on

**32-4519. Regulations governing screening.** The department may adopt rules governing the materials to be used in, and the location, planting, construction and maintenance of screening or fencing required by this act.

**History:** En. Sec. 7, Ch. 285, L. 1967; amd. Sec. 156, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment substituted "department" for "commission"; and made a minor change in phraseology.

**32-4520. Authority to acquire interest in land for screening and removal of junkyards.** (1) When the department determines that it is in the best interests of the state, it may acquire such lands or interests in lands as may be necessary to provide adequate screening.

(2) When the department determines that the topography of the land adjoining the highway will not permit adequate or economically feasible screening, it may acquire by gift, purchase, exchange or condemnation such interests in lands as may be necessary to secure the relocation, removal or disposal of junkyards which were either:

- (a) Lawfully in existence on October 22, 1965; or
- (b) Lawfully along any highway made a part of the interstate or primary systems on or after October 22, 1965, and before January 1, 1968; or
- (c) Lawfully established on or after January 1, 1968.

(3) The department shall pay just compensation to the owner for the relocation, removal or disposal of any such junkyard.

**History:** En. Sec. 8, Ch. 285, L. 1967; amd. Sec. 157, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment substituted "department" for "commission" throughout the section.

**32-4521. Injunction.** The department may apply to the district court for the county in which is located any junkyard not conforming to the requirements of this act for an injunction to abate such nuisance.

**History:** En. Sec. 9, Ch. 285, L. 1967; amd. Sec. 158, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment substituted "department" for "commission."

**32-4522. Agreements with the United States.** The department may enter into agreements with the United States secretary of transportation as provided in Title 23, United States Code, relating to the control of

junkyards in areas adjacent to the interstate and primary systems, and take action in the name of the state to comply with the terms of those agreements.

History: En. Sec. 10, Ch. 285, L. 1967;  
amd. Sec. 159, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "commission"; and made a minor change in phraseology.

**32-4523. Interpretation.** Nothing in this act shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation or resolution which are more restrictive than the provisions of this act.

History: En. Sec. 11, Ch. 285, L. 1967.

#### Separability Clause

Section 12 of Ch. 285, Laws 1967 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or

more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

#### Repealing Clause

Section 13 of Ch. 285, Laws 1967 read "Sections 32-4501 through 32-4512, Revised Codes of Montana, 1947, are repealed."

## CHAPTER 46—TRAFFIC SAFETY PROGRAM

Section 32-4601. Purpose of chapter.

32-4602. Definitions.

32-4605. Duties.

32-4606. Funds.

32-4607. Local programs.

**32-4601. Purpose of chapter.** To promote public safety, health, and welfare, and to reduce traffic deaths, injuries and property losses resulting from traffic accidents, it is in the public interest to establish a highway traffic safety program and provide for its administration. It is in the public interest to implement, modernize, and improve the following traffic safety activities: driver performance, including, but not limited to, driver education, driver testing to determine proficiency to operate motor vehicles; driver examinations, both physical and mental; driver licensing; pedestrian performance; establish an effective accident record system, including traffic accident investigation to determine the probable cause of accidents, injuries and deaths; to improve and establish a system of vehicle registration, vehicle operation and vehicle inspection; to assist in the improving of highway design and maintenance, including lighting, markings, and surface treatment to improve safety; establish an effective traffic control system; promote the adoption of uniform vehicle laws; provide for surveillance of traffic for detection and correction of high or potentially high accident locations; establish emergency services, including, but not limited to, communications, medical or mechanical assistance, and ambulance service for injured persons; establish an effective compilation and storage program of reports and records through electronic data processing.

History: En. Sec. 1, Ch. 177, L. 1967;  
amd. Sec. 74, Ch. 348, L. 1974.

#### Title of Act

An act for the establishment of a state

highway traffic safety program, setting forth definitions; establishing administration thereof, authorizing political subdivision participation, permitting the acceptance of federal funds, the collection



and expenditure of monies; providing for programs for driver education training and certification of instructors, regulation of schools including licensing thereof; adult driver training and retraining programs; research, development and procurement of practice driving facilities, simulators and teaching aids, licensing,

revocation and regulation of drivers and operators of all motor vehicles.

#### Amendments

The 1974 amendment substituted "chapter" for "act" in the caption; and made minor changes in phraseology.

**32-4602. Definitions.** Unless the context requires otherwise, in this chapter:

(1) "Highway traffic safety program" means a program designed to reduce traffic accidents, deaths, and injuries to persons, and damage to property. The program shall be in accordance with uniform standards established by the secretary of commerce of the United States under Title 23, United States Code Annotated, as amended. Nothing in this chapter restricts or prohibits the establishment of standards which enlarge or implement the federal standards.

(2) "Political subdivisions" means every county, incorporated city or town, and school district within the boundaries of the state.

(3) "Department" means the department of intergovernmental relations provided for in Title 82A, chapter 9.

**History:** En. Sec. 2, Ch. 177, L. 1967; amd. Sec. 75, Ch. 348, L. 1974.

definition of "Department" for the definition of "Board"; and made minor changes in phraseology and punctuation.

#### Amendments

The 1974 amendment substituted the

**32-4603, 32-4604. Repealed.**

#### Repeal

Sections 32-4603 and 32-4604 (Secs. 3, 4, Ch. 177, L. 1967), relating to the Mon-

tana highway traffic safety board, were repealed by Sec. 107, Ch. 348, Laws of 1974.

**32-4605. Duties.** (1) The governor is responsible for the administration of the highway traffic safety program. The governor may contract and do all other things necessary to secure the full benefits available to this state under the Federal Highway Safety Act of 1966, and, in so doing, may co-operate with federal and state agencies, private and public organizations, and individuals to effectuate the purposes of that enactment, and all amendments to it. For purposes of participation in the Federal Highway Safety Act of 1966, the governor shall designate the superintendent of public instruction as the state agency responsible for all aspects of federally assisted driver education and safety programs in the public schools, including the approval of the programs; certification of teachers; and the acceptance, allocation, and expenditure of funds for driver education in accordance with applicable federal laws and regulations. Nothing in this chapter interferes with the provisions of section 75-7303 or chapter 79 of Title 75, R. C. M., 1947.

(2) The department of intergovernmental relations shall:

(a) advise and assist the governor in all matters of highway safety and establish comprehensive training programs, including establishment and regulation of driver training schools and certification of the schools

and instructors and establishment of adult training and retraining programs;

(b) develop and procure practice driving facilities, simulators, and other teaching aids for school and driver training use;

(c) establish a continuing and adequate research program designed to determine the causes of accidents and effect a program of prevention;

(d) establish a uniform system of driver licensing, including mental and physical standards; and

(e) prescribe and establish safety regulations for motor vehicles and operators.

History: En. Sec. 5, Ch. 177, L. 1967; amd. Sec. 76, Ch. 348, L. 1974.

#### Compiler's Notes

The Federal Highway Safety Act of 1966, referred to in this section, is compiled as sections 401 to 404 of Title 23, United States Code.

Chapters 51 and 53 of Title 75, referred to at the end of the first paragraph of this section, were repealed by Sec. 496, Ch. 5, Laws of 1971. For similar provisions in current law, see section 75-7303 and Chapter 79, Title 75.

#### Amendments

The 1974 amendment substituted the last sentence in subsection (1) for "Nothing in this act shall interfere with the provisions of chapter 51 or chapter 53 of Title 75, Revised Codes of Montana, 1947"; substituted "department of inter-governmental relations" for "board" at the beginning of subsection (2); and made minor changes in phraseology, punctuation and style.

**32-4606. Funds.** The governor and the department may enter into contracts with the federal government to secure maximum federal appropriation. At least forty per cent (40%) of all federal funds received by the state shall be spent by the political subdivisions of the state in carrying out local approved highway traffic safety programs. Except as provided in this chapter, the governor may accept all gifts, money, and funds to implement the purposes of this chapter. The expenditure of funds, exclusive of the federal appropriation, shall be maintained at a level which shall not fall below the average level of the expenditures for the last two (2) full fiscal years preceding July 1, 1966, as determined by the expenditures of state and political subdivisions.

History: En. Sec. 6, Ch. 177, L. 1967; amd. Sec. 77, Ch. 348, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "highway traffic safety board"; substituted "this chapter" for "this act" in two places; and made minor changes in phraseology and punctuation.

**32-4607. Local programs.** Except as provided in this chapter, all highway traffic safety programs of political subdivisions must be approved by the governor and no funds may be spent unless his approval is obtained. All local and state officials shall co-operate with the governor and department to accomplish the purposes of this chapter. The governor shall administer the highway traffic safety programs of this state and its political subdivisions in accordance with this chapter and federal rules.

History: En. Sec. 7, Ch. 177, L. 1967; amd. Sec. 78, Ch. 348, L. 1974.

#### Amendments

The 1974 amendment substituted "this chapter" for "this act" throughout the section; substituted "department" for

"highway traffic safety board" in the second sentence; substituted "governor shall administer" for "governor is hereby empowered to administer" in the last sentence; and made minor changes in phraseology.

**Separability Clause**

Section 8 of Ch. 177, Laws 1967 read "The provisions of this act shall be severable; and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitu-

tional or void, the remainder of this act shall continue in full force and effect."

**Repealing Clause**

Section 9 of Ch. 177, Laws 1967 repealed all acts and parts of acts in conflict therewith.

CHAPTER 47—OUTDOOR ADVERTISING ALONG HIGHWAYS

- Section 32-4715. Legislative findings and policy—short title.  
 32-4716. Definition of terms.  
 32-4717. Outdoor advertising prohibited in proximity to highway—exceptions—standards and permits.  
 32-4718. Rules controlling outdoor advertising.  
 32-4719. Standards for permitted advertising.  
 32-4720. Permits required—identification tags—pre-existing structures.  
 32-4721. Notice of violations—remedial action.  
 32-4722. Advertising deemed unlawful—notice to remove—hearing—appeal to district court.  
 32-4723. Acquisition of outdoor advertising rights—compensation.  
 32-4724. Agreements with secretary establishing specifications for advertising.  
 32-4725. More restrictive regulations preserved.  
 32-4726. Relaxation of regulations if federal law changed.  
 32-4727. Violation as misdemeanor.  
 32-4728. Nonconforming advertising as nuisance.

**32-4701 to 32-4714. Repealed.**

**Repeal**

Sections 32-4701 to 32-4714 (Secs. 1-14, Ch. 287, L. 1967; Sec. 1, Ch. 211, L. 1969; Secs. 1 to 4, Ch. 220, L. 1971), relating to

zoning and outdoor advertising, were repealed by Sec. 17, Ch. 2, 2nd Ex. Laws 1971. For new law, see secs. 32-4715 to 32-4728.

**32-4715. Legislative findings and policy—short title.** (a) The legislature finds and declares that in order to promote the safety, convenience and enjoyment of travel on, and protection of the public investment in highways within this state, and to preserve and enhance the natural scenic beauty or aesthetic features of the highways and adjacent areas, it shall be the policy of this state that the erection and maintenance of outdoor advertising in areas adjacent to the right of way of the interstate and primary systems within this state shall be regulated in accordance with the terms of this act and the rules and regulations promulgated by the commission, pursuant thereto. It is the intention of the legislature in this act to provide a statutory basis for regulation of outdoor advertising consistent with the public policy relating to areas adjacent to the interstate and primary systems declared by Congress in Title 23, United States Code, "Highways."

(b) This act may be cited as the "Outdoor Advertising Act."

**History:** En. Sec. 1, Ch. 2, 2nd Ex. L. 1971.

**Title of Act**

An act to provide for the control of outdoor advertising adjacent to interstate

and primary highway systems in compliance with the Highway Beautification Act of 1965; repealing sections 32-4701 through 32-4714, R. C. M. 1947, and providing an effective date.

**32-4716. Definition of terms.** As used in this act: (a) "Interstate system" means that portion of the national system of interstate and



defense highways located within this state, as officially designated, or as may hereafter be so designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways."

(b) "Primary system" means that portion of connected main highways, as officially designated or as may hereafter be so designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways."

(c) "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other structure which is designed, intended or used to advertise or inform and which is visible from any place on the main traveled way of the interstate or primary systems.

(d) "Commission" means the state highway commission of Montana.

(e) "Secretary" means the secretary of the United States department of transportation.

(f) "Safety rest area" means an area or site established and maintained within or adjacent to the right of way by or under public supervision or control, for the convenience of the traveling public.

(g) "Information center" means an area or site established or maintained at safety rest areas for the purpose of informing the public of places of interest within the state and providing such other information as the commission may consider desirable.

(h) "Visible" means capable of being seen, and legible, without visual aid by a person of normal visual acuity.

(i) "Commercial or industrial zone" means an area which is used or reserved for business, commerce, or trade pursuant to comprehensive local zoning ordinances or regulations, or enabling state legislation, or state legislation itself, including highway service areas lawfully zoned as highway service zones where the primary use of the land is used or reserved for commercial and roadside services, other than outdoor advertising, to serve the traveling public. Areas temporarily zoned as commercial or industrial by an interim regulation or map adopted as an emergency measure pursuant to section 16-4711, R. C. M. 1947, shall not be considered as covered by this definition.

(j) "Unzoned commercial or industrial area" means an area not zoned by state or local law, regulation or ordinance which is occupied by one or more industrial or commercial activities, other than outdoor advertising, on the lands along the highway for a distance of six hundred (600) feet immediately adjacent to the activities, and those lands directly opposite on the other side of the highway to the extent of the same dimensions; provided, those lands on the opposite side of the highway are not deemed scenic or having aesthetic value as determined by the commission.

(k) "Commercial or industrial activities" means for purposes of subsection (j) those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities shall be considered commercial or industrial:

(i) Agricultural, forestry, grazing, farming and related activities including wayside fresh produce stands.

(ii) Transient or temporary activities.

(iii) Activities not visible from the main traveled way.

(iv) Activities conducted in a building principally used as a residence.

(v) Railroad tracks and minor sidings.

(vi) Activities more than six hundred and sixty (660) feet from the nearest edge of the right of way.

(l) "Maintain" means to allow to exist, subject to the provisions of this act.

(m) "Maintenance" means to repair, refurbish, repaint or otherwise keep an existing sign structure in a state suitable for use.

(n) "Interchange" or "intersection" means those areas and their approach where traffic is channeled off or onto an interstate route including the de-acceleration lanes or acceleration lanes from or to another federal, state, county, city, or other route.

History: En. Sec. 2, Ch. 2, 2nd Ex. L.  
1971; amd. Sec. 1, Ch. 89, L. 1974.

#### Amendments

The 1974 amendment added the last sentence to subdivision (i).

**32-4717. Outdoor advertising prohibited in proximity to highway—exceptions—standards and permits.** (a) Outdoor advertising may not be erected or maintained which is within six hundred and sixty (660) feet of the nearest edge of the right of way and which is visible from any place on the main traveled way, of an interstate or primary system, except:

(i) Directional and other official signs and notices, which signs and notices include, but are not limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, as authorized or required by law.

(ii) Signs, displays and devices advertising the sale or lease of property upon which they are located.

(iii) Signs, displays and devices advertising activities conducted on the property upon which they are located.

(iv) Signs, displays and devices located in areas which are zoned industrial or commercial by a bona fide state, county or local zoning authority.

(v) Signs, displays and devices located in unzoned commercial or industrial areas, which areas shall be determined from actual land uses and by agreement between the department of highways and the secretary and defined by rules adopted by the commission. The exception granted by this subsection shall not apply to signs, displays and devices located within an unzoned area in which the commercial or industrial activity used in defining the area has ceased for a period of nine (9) months.

(b) Outdoor advertising authorized under subsections (i), (iv), and (v) of subsection (a) of this section shall conform with standards contained in, and shall bear permits required in, rules which are adopted by the commission and this act.

**History:** En. Sec. 3, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 160, Ch. 316, L. 1974. department of highways" for "commission" in subdivision (a)(v); and made minor changes in phraseology.

**Amendments**

The 1974 amendment substituted "de-

**32-4718. Rules controlling outdoor advertising.** The commission may adopt rules to control the erection and maintenance of outdoor advertising along the interstate and primary highway systems in conformance with the terms of this act and in conformity with section 131 of Title 23, United States Code, as amended.

**History:** En. Sec. 4, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 161, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment made minor changes in phraseology.

**32-4719. Standards for permitted advertising.** Signs permitted under section 32-4717 shall conform to the following requirements:

(a) Signs may not be erected or maintained which exceed one thousand two hundred (1,200) square feet in area including border and trim, but excluding base or apron, supports, and other structural members.

(b) Maximum length sixty (60) feet.

(c) Maximum height forty (40) feet, as measured from the ground or, if the sign is attached to a structure, as measured from the base of the sign itself.

(d) No more than two (2) facings visible and readable from the same direction on the main traveled way may be erected on any one (1) sign structure. Whenever two (2) facings are so positioned, neither shall exceed three hundred twenty-five (325) square feet.

(e) Double-faced, back-to-back and V-type signs shall be considered as a single sign or structure.

(f) Where two (2) or more faces, back to back, are supported by separate structures each shall be considered a single sign.

(g) No two (2) signs shall be spaced less than five hundred (500) feet apart adjacent to an interstate highway, or limited-access primary highway except that signs may be erected closer than five hundred (500) feet if they are separated by buildings or other obstructions in such a manner that only one (1) sign facing located within the above spacing distance is visible from the highway at any one (1) time.

(h) Signs may not be located within five hundred (500) feet of any of the following which are adjacent to the highway, unless the signs are in an incorporated area:

(i) Public parks.

(ii) Public forests.

(iii) Public playgrounds.

(iv) Scenic areas designated as such by the state highway department or other state agency having and exercising this authority.

(v) Cemeteries.

(i) A sign may not be located on an interstate highway or freeway within five hundred (500) feet of an interchange, or intersection at grade, or rest area. The five hundred (500) feet is to be measured along the



interstate or freeway from the beginning or ending of the pavement widening at the exit from or entrance to the main traveled way.

(j) Signs may be illuminated, subject to the following restrictions:

(i) Signs which contain, include, or are illuminated by a flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather or similar information.

(ii) Signs which are not effectively shielded as to prevent beams or rays of light from being directed at a portion of the traveled ways of the interstate or federal aid primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with a driver's operation of a motor vehicle are prohibited.

(iii) A sign may not be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.

(k) The location of sign structures situated on the primary highways between streets, roads or highways entering or intersecting the main traveled way shall conform to the following minimum spacing criteria:

(i) Where the distance between center lines of intersecting streets or highways is less than one thousand (1,000) feet, a minimum spacing between structures of one hundred fifty (150) feet may be permitted between the intersecting streets or highways.

(ii) Where the distance between center lines of intersecting streets or highways is one thousand (1,000) feet or more, minimum spacing between sign structures shall be three hundred (300) feet.

History: En. Sec. 5, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 2, Ch. 89, L. 1974; amd. Sec. 162, Ch. 316, L. 1974.

composite section embodying the changes made by both amendments.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 89 and once by Ch. 316. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a

#### Amendments

Chapter 89, Laws of 1974, substituted "section 32-4717" for "section 3(a)(i), (ii), (iii), (iv), and (v)" in the introduction; inserted subdivision (f); and redesignated former subdivisions (f) to (j) as (g) to (k).

Chapter 316 made minor changes in phraseology and punctuation.

**32-4720. Permits required — identification tags — pre-existing structures.** (1) A sign authorized by subsections (i), (iv), and (v) of subsection (a) of section 32-4717 may not be constructed or maintained without a permit. Applications for permits shall be made to the department on forms furnished by it. The department shall require reasonable information to be furnished, including a statement that the owner or occupant of the land has consented to the erection or maintenance of the sign on the land. A permit must be obtained for each sign and the application for the permit must be accompanied by an initial fee of six dollars (\$6).

(2) Permits shall be issued for three (3) years, assigned a permit number, and renewed every three (3) years thereafter upon payment of three dollars (\$3) without the filing of a new application. All fees re-

ceived shall be paid into the state highway account in the earmarked revenue fund.

(3) The department shall issue with each new permit a permanent identification tag not larger than six (6) square inches which shall be affixed to the sign in a position readily visible from the highway.

(4) Notwithstanding the foregoing provisions of this section, the department shall issue permits and identification tags, upon application and payment of the requisite fee for a structure lawfully in existence on June 23, 1971, and the permits shall thereafter be renewed for a period of time as is prescribed in this section, unless the structure is removed for improper maintenance.

**History:** En. Sec. 6, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 163, Ch. 316, L. 1974.

#### **Amendments**

The 1974 amendment substituted "department" for "commission" throughout

the section; substituted "in existence on June 23, 1971" in subsection (4) for "in existence on the day prior to the effective date of this act"; and made minor changes in phraseology and style.

**32-4721. Notice of violations—remedial action.** When the department determines that a willful false or misleading statement has been made in the application for a permit or that the structure for which a permit was issued is not in a reasonable state of repair, or is unsafe, the department shall notify the holder of the permit in writing, either by certified mail or by personal service, of the violation and specify that remedial action shall be taken within sixty (60) days or the permit will be revoked and action for removal of the sign commenced as provided in section 32-4722. No notice is required prior to filing a complaint after the notice period has lapsed.

**History:** En. Sec. 7, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 164, Ch. 316, L. 1974.

#### **Amendments**

The 1974 amendment substituted "department" for "commission" in two places and made a minor change in style.

**32-4722. Advertising deemed unlawful—notice to remove—hearing—appeal to district court.** (1) The following outdoor advertising is unlawful:

- (a) When erected after June 24, 1971, contrary to this act; or
- (b) When a permit is not obtained as prescribed in this act; or
- (c) When a permittee fails to comply with a notice of violation as provided in section 32-4721.

(2) The department shall give notice in writing, either by certified mail or by personal service, to the owner or occupant of the land on which advertising believed to be unlawful is located and to the owner of the outdoor advertising structure, if the latter is known, or if unknown, by posting notice in a conspicuous place on the structure, of its intention to remove the unlawful advertising. Within forty-five (45) days after the notice, the owner of the land or of the structure may make a written request for a hearing before the commission to show cause why the structure should not be removed.

(3) If a hearing before the commission is not requested, or if there is no appeal taken from the commission's decision at the hearing, or if the

commission's decision is affirmed on appeal, the department shall immediately remove, or cause to be removed, the unlawful outdoor advertising. The owner of the structure and the owner or occupant of the land are jointly and severally liable for the costs of the removal. The department may enter upon lands bearing outdoor advertising and make examination of such advertising. The department may, upon final determination by the commission that an item of outdoor advertising is unlawful, enter upon lands bearing such advertising and remove the unlawful advertising. The department incurs no liability for the entry or entries except for injuries resulting from negligence, wantonness or malice.

**History:** En. Sec. 8, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 3, Ch. 89, L. 1974; amd. Sec. 165, Ch. 316, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 89 and once by Ch. 316. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 89, Laws of 1974 substituted "section 32-4721" for "section 7 of this act" at the end of subdivision (1)(c); inserted "or caused to be removed" after "immediately removed" in the first sentence of subsection (3); inserted the provisions in subsection (3) pertaining to the department's authority to enter upon

lands for examinations and removal of unlawful advertising; and rewrote the last sentence of subsection (3) which read: "The commission shall incur no liability for causing this removal, except for damage caused by negligence of the commission, its agents or employees."

Chapter 316, Laws of 1974, changed the subsection designations from small letters to numerals; substituted "after June 24, 1971" for "after the effective date of this act" in subdivision (1)(a); substituted "section 32-4721" for "section 7 of this act" at the end of subdivision (1)(c); substituted "department" for "commission" in the first sentence of subsection (2) and in two places in subsection (3); deleted provisions pertaining to the transcript and record of the commission hearing and procedure on appeal from a decision of the commission to the district court; and made minor changes in phraseology and punctuation.

### 32-4723. Acquisition of outdoor advertising rights — compensation.

(a) The department may acquire by gift, purchase, agreement, exchange or eminent domain, existing outdoor advertising and property rights pertaining to the advertising which were lawfully in existence on June 24, 1971, and which by virtue of this act are nonconforming. Eminent domain shall be exercised in accordance with the laws of the state.

(b) Just compensation shall be paid for outdoor advertising and property rights pertaining to the advertising acquired through the process of eminent domain. The department may remove outdoor advertising found in violation of sections 32-4721 or 32-4722 without payment of compensation.

(c) Despite a contrary provision in this act, a sign may not be required to be removed without just compensation, unless found to be in violation of sections 32-4721 or 32-4722. Except as provided in sections 32-4721 and 32-4722, a sign may not be required to be removed unless at the time of removal or discontinuance there are sufficient funds, from whatever source, appropriated and immediately available to pay the just compensation required under this section, and unless at that time the federal funds required to be contributed under section 131 (g) of Title 23, United States Code, with respect to the outdoor advertising being re-



moved, have been apportioned and are immediately available to this state.

**History:** En. Sec. 9, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 166, Ch. 316, L. 1974.

#### **Amendments**

The 1974 amendment substituted "de-

partment" for "commission" in subsections (a) and (b); substituted "June 24, 1971" for "effective date of this act" in subsection (a); and made minor changes in phraseology and style.

**32-4724. Agreements with secretary establishing specifications for advertising.** The department may enter into an agreement with the secretary regarding the size, lighting and spacing of outdoor advertising, as provided in this act, which may be erected and maintained within the areas adjacent to the interstate and primary highway system which are zoned commercial, industrial, or in such other unzoned commercial or industrial areas as may be determined by agreement, and as provided in this act.

**History:** En. Sec. 10, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 167, Ch. 316, L. 1974.

#### **Amendments**

The 1974 amendment substituted "de-

partment" for "highway commission of the state of Montana"; and made a minor change in phraseology.

**32-4725. More restrictive regulations preserved.** Nothing in this act shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation or resolution, which is more restrictive than the provisions of this act.

**History:** En. Sec. 11, Ch. 2, 2nd Ex. L. 1971.

**32-4726. Relaxation of regulations if federal law changed.** In the event the general requirements of Title 23, United States Code, "Highways," or existing rules and regulations of the United States department of transportation become amended or changed to less restrictive conditions than presently exist, then, the commission must amend or change such rules and regulations that it may have adopted to come into conformity with the federal law, rule and regulation; however, in no event shall this act become more restrictive than is indicated herein by said federal action.

**History:** En. Sec. 12, Ch. 2, 2nd Ex. L. 1971.

#### **Nonconforming Uses**

Section 13, Ch. 2, 2nd Ex. L. 1971, read: "Outdoor advertising contracted for prior to the enactment of this act and which under the provisions of the act becomes nonconforming shall not be regulated as such until January 1, 1972."

#### **Separability Clause**

Section 14 of Ch. 2, 2nd Ex. Laws 1971 read "If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby."

**32-4727. Violation as misdemeanor.** Any person violating any provision of this act is guilty of a misdemeanor.

**History:** En. Sec. 15, Ch. 2, 2nd Ex. L. 1971.

**32-4728. Nonconforming advertising as nuisance.** All outdoor advertising which does not conform to the requirements of this act are public nuisances.

**History:** En. Sec. 16, Ch. 2, 2nd Ex. L. 1971.

**Effective Date**

Section 18 of Ch. 2, 2nd Ex. Laws 1971 provided the act should be in effect from and after its passage and approval. Approved June 24, 1971.

**Repealing Clause**

Section 17 of Ch. 2, 2nd Ex. Laws 1971 read "Sections 32-4701 through Section 32-4714, R. C. M. 1947, are hereby repealed."

## CHAPTER 48—EXCAVATIONS IN PUBLIC STREETS

Section 32-4801. Definitions.

32-4802. Information to be sought before excavation made.

32-4803. Procedure—filing with county clerk and recorder.

32-4804. Liability for damage from failure to obtain information.

32-4805. Liability for negligence notwithstanding information obtained.

32-4806. Immunity from liability if information is not given within specified time.

32-4807. Exemption for emergency repairs.

32-4808. Information to be part of architects and engineers' plan.

**32-4801. Definitions.** The following definitions shall apply to this act:

(a) "Person" shall mean and include an individual, partnership, joint venture or corporation, and includes the employer of an individual.

(b) "Underground facility" shall mean any item of personal property which shall be buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, electric energy, oil, gas, or other substances, and shall include but not be limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to the aforesaid.

(c) "Excavation" shall mean and include any ditch, trench, cut, hole or change in grade.

**History:** En. Sec. 1, Ch. 180, L. 1971.

**Title of Act**

An act requiring persons excavating in any public street, alley, right of way

dedicated to public use or utility easement to obtain information as to existence therein of underground facilities, and providing civil penalties for failure so to do.

**32-4802. Information to be sought before excavation made.** No person shall make or begin any excavation in any public street, alley, right of way dedicated to the public use or utility easement without first obtaining information concerning the possible location of any underground facility from each and every public utility, municipal corporation or other person having the right to bury such underground facilities within the public street, alley, right of way or utility easement.

**History:** En. Sec. 2, Ch. 180, L. 1971.

**32-4803. Procedure—filing with county clerk and recorder.** Any person seeking information concerning the location of any underground facility must do so by request in writing. The person from whom such information is sought must acknowledge in writing receipt of such request and must provide such information in writing no later than the end of the normal business hours of the second full business day following

the date of receipt [of] the request, Saturdays, Sundays and holidays excluded.

Every public utility, municipal corporation, or other person having the right to bury underground facilities, shall file with the county clerk and recorder in each county where the underground facilities are located, the name, address, and telephone number of the person or persons from whom the necessary information may be obtained.

History: En. Sec. 3, Ch. 180, L. 1971.

**Compiler's Notes**

The compiler has inserted the bracketed word "of" near the end of the first paragraph of this section.

**32-4804. Liability for damage from failure to obtain information.** If any underground facility is damaged by any person who has failed to obtain information as to its location as provided in section 3 [32-4803], then such person shall be liable to the owner of the underground facility for the entire cost of the repair of such facility.

History: En. Sec. 4, Ch. 180, L. 1971.

**32-4805. Liability for negligence notwithstanding information obtained.** The act of obtaining information as required by this act shall not excuse any person making any excavation from doing so in a careful and prudent manner nor shall it excuse such person from liability for any damage or injury resulting from his negligence.

History: En. Sec. 5, Ch. 180, L. 1971.

**32-4806. Immunity from liability if information is not given within specified time.** If information requested pursuant to section 3 [32-4803] of this act is not provided within the time specified therein, any person damaging or injuring underground facilities shall not be liable for such damage or injury, unless caused by his negligence.

History: En. Sec. 6, Ch. 180, L. 1971.

**32-4807. Exemption for emergency repairs.** The provisions of this act shall not apply to any person making repairs to an underground facility or repairs to the streets or alleys themselves in a situation of emergency when such repairs must be made within a shorter period of time than that provided for in section 3 [32-4803] of this act, provided, however, that this exemption from obtaining information shall not excuse the person making the repairs from any liability for damages caused by his negligence.

History: En. Sec. 7, Ch. 180, L. 1971.

**32-4808. Information to be part of architects and engineers' plan.** Architects and engineers designing or requiring excavating in or adjacent to any public street, alley or right of way dedicated to public use or utility easement shall obtain information as to underground facilities and then make said information a part of the plan by which the con-



tractors operate. Nothing in this section shall excuse any person from the obligation imposed by section 2 [32-4802] of this act.

**History:** En. Sec. 8, Ch. 180, L. 1971.

**Separability Clause**

Section 9 of Ch. 180, Laws 1971 read  
"It is the intent of the legislative assembly that if a part of this act is invalid,

all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."



## TITLE 33—HOMESTEADS

### Chapter 1. Homesteads, 33-124.

#### CHAPTER 1—HOMESTEADS

##### Section 33-124. Homesteads—quantity and value of land.

**33-124. (6968) Homesteads—quantity and value of land.** Homesteads may be selected and claimed:

1 and 2. \* \* \* [Same as parent volume.]

3. Such homestead, in either case, shall not exceed in value the sum of twenty thousand dollars (\$20,000), provided, however, that in any proceedings instituted to determine the value of such homestead, the assessed value of such land, with included appurtenances, if any, and of such dwelling house as appears on the last completed assessment roll preceding the institution of such proceedings shall be prima facie evidence of the value of the property claimed as a homestead.

**History:** En. Sec. 1693, Civ. C. 1895; re-en. Sec. 4717, Rev. C. 1907; re-en. Sec. 6968, R. C. M. 1921; amd. Sec. 1, Ch. 126, L. 1931; amd. Sec. 1, Ch. 166, L. 1937; amd. Sec. 1, Ch. 50, L. 1941; amd. Sec. 1, Ch. 266, L. 1965; amd. Sec. 1, Ch. 300, L. 1973. Cal. Civ. C. Sec. 1260.

##### Amendments

The 1965 amendment increased the maximum value of the homestead speci-

fied in paragraph 3 from \$2,500 to \$7,500.

The 1973 amendment increased the maximum value of a homestead specified in subdivision 3 from \$7,500 to \$20,000.

##### Effective Date

Section 2 of Ch. 266, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.





## TITLE 34—HOTELS

- Chapter 2. Sanitation and control by state board of health, Repealed—Section 12, Chapter 18, Laws of 1967.  
3. Licensing and regulation of lodging establishments, 34-301 to 34-307, 34-309, 34-310.

### CHAPTER 2—SANITATION AND CONTROL BY STATE BOARD OF HEALTH

(Repealed—Section 12, Chapter 18, Laws of 1967, effective January 1, 1968)

34-201 to 34-217. (2485 to 2495, 2497 to 2502) Repealed.

#### Repeal

These sections (Secs. 1 to 4, Ch. 160, L. 1917; Secs. 1 to 13, Ch. 36, L. 1919; Sec. 1, Ch. 84, L. 1921), relating to sani-

tation of hotels and lodging houses, were repealed by Sec. 12, Ch. 18, Laws 1967, effective January 1, 1968. For present law, see 34-301 to 34-310.

### CHAPTER 3—LICENSING AND REGULATION OF LODGING ESTABLISHMENTS

- Section 34-301. Control and regulation of establishments required by public interest.  
34-302. Definitions.  
34-303. License required.  
34-304. Fee—term of license.  
34-305. Cancellation or denial of license—procedure.  
34-306. Rules—co-operative agreements.  
34-307. Inspections.  
34-309. Penalty.  
34-310. License fee—supersedes other fees.

**34-301. Control and regulation of establishments required by public interest.** It is hereby found and declared that the public welfare requires control and regulation of the operation of establishments providing lodging space accommodations, as defined in section 2 [34-302] hereof, and the control, inspection, and regulation of persons engaged therein, in order to prevent or eliminate unsanitary and unhealthful conditions and practices, which conditions and practices may endanger public health. It is further found and declared that the regulation of establishments providing lodging space accommodations as above outlined is in the interest of social well-being and the health and safety of the state and all of its people.

**History:** En. Sec. 1, Ch. 18, L. 1967; amd. Sec. 1, Ch. 485, L. 1973.

#### Title of Act

An act to regulate establishments providing transient lodging space and/or accommodations; defining terms; providing for licensure and license fee; and providing procedure for cancellation or denial of license; empowering state board of health of Montana to make and enforce all necessary regulations including sani-

tary standards for such establishments; providing for public hearing on rules and regulations; and to establish co-operative agreements with other Montana agencies; providing for inspection and report of inspection; empowering state board of health of Montana to issue subpoenas; prescribing penalties; providing for fee required by this act to supersede other fees for same purpose; directing that unconstitutionality of a part of this act shall not affect or impair the re-

mainder; and repealing sections 34-201, 34-202, 34-203, 34-204, 34-205, 34-206, 34-207, 34-208, 34-209, 34-210, 34-211, 34-212, 34-213, 34-214, 34-215, 34-216, 34-217, Revised Codes of Montana, 1947, as amended or supplemented, and establishing effective date.

#### Amendments

The 1973 amendment deleted "transient" before "lodging space" in the first and second sentences; and made a minor change in phraseology.

**34-302. Definitions.** Unless the context requires otherwise in this act:

(a) "Person" includes an individual, partnership, corporation, association, county, municipality, co-operative group, or other entity engaged in the business of operating, owning, or offering the services of a hotel, motel, tourist home, retirement home or rooming house.

(b) "Board" means board of health and environmental sciences.

(c) "Department" means the department of health and environmental sciences.

(d) "Hotel or motel" includes a building or structure kept, used, or maintained as or advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, public lodging house or place where sleeping accommodations are furnished for a fee to transient guests with or without meals.

(e) "Tourist home" means an establishment or premises where sleeping accommodations are furnished to transient guests for hire or rent on a daily or weekly rental basis in a private home when the accommodations are offered for hire or rent for the use of the traveling public.

(f) "Transient guest" means a guest for only a brief stay, such as the traveling public.

(g) "Rooming house or retirement home" means buildings in which separate sleeping rooms are rented providing sleeping accommodations for three (3) or more persons on a weekly, semimonthly, monthly or permanent basis; with or without meals, but without separate cooking facilities for individual occupants.

**History:** En. Sec. 2, Ch. 18, L. 1967; amd. Sec. 2, Ch. 485, L. 1973.

#### Amendments

The 1973 amendment inserted "retirement home or rooming house" at the end of subdivision (a); inserted "and environmental sciences" in subdivision (b); de-

leted former subdivision (c) defining "executive officer" and relettered subdivisions (d), (e) and (f), as (c), (d) and (e); inserted "and environmental sciences" at the end of subdivision (c); added subdivisions (f) and (g); and made minor changes in style and phraseology.

**34-303. License required.** Each year, every person engaged in the business of conducting or operating a hotel, motel, tourist home, retirement home or rooming house, shall procure a license issued by the department. A separate license is required for each establishment; however, where more than one of each type of establishment is operated on the same premises and under the same management, only one license is required which shall enumerate on the certificate thereof the types of establishments licensed. Applications for a license shall be made in writing to the department on such forms and with such pertinent information as it considers necessary. Existing licenses shall be renewed



as a matter of right, unless conditions exist which are grounds for a cancellation or denial of a license.

If determination is made to deny an initial application for a license, or if a renewal application is denied and a license canceled, the denial or cancellation shall be preceded by written notice of the grounds therefor and the opportunity to request a hearing before the board to show cause why the license should be denied.

**History:** En. Sec. 3, Ch. 18, L. 1967; amd. Sec. 3, Ch. 485, L. 1973.

tuted "Existing licenses shall be renewed" for "Such licenses shall be granted" at the beginning of the last sentence in the first paragraph; added the second paragraph; and made minor changes in punctuation and style.

#### Amendments

The 1973 amendment inserted "retirement home or rooming house" in the first sentence of the first paragraph; substi-

**34-304. Fee—term of license.** (a) There shall be paid to the department with each application for such license or for renewal of such license, an annual license fee of ten dollars (\$10). These fees shall be deposited with the state treasury to the credit of the general fund.

(b) Each license shall expire on December 31 following its date of issue, unless canceled for cause. Renewal may be obtained annually by paying the required annual license fee. Such license shall not be transferable nor be applicable to any premises other than that for which originally issued.

**History:** En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973.

stituted the present second sentence of subsection (a) for a sentence reading, "Fees collected by the department of health shall be transmitted to the state treasurer and placed to the credit of the general fund."

#### Amendments

The 1973 amendment increased the annual license fee from \$5 to \$10 in the first sentence of subsection (a); and sub-

**34-305. Cancellation or denial of license—procedure.** (1) The department may cancel a license if it finds, after proper investigation, that the licensee has violated this act or a rule effective under this act, and the licensee has failed or refused to remedy or correct the violation. Submission to the department of an acceptable plan of correction within ten (10) days after receipt from the department of written notice of violation, and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department shall be a bar to prosecution for violation.

(2) A license may not be denied or canceled by the department without delivery to the applicant or licensee of a written statement of the grounds therefor or the charge involved and an opportunity to answer at a hearing before the board to show cause, if any, why the license should not be denied or canceled. In such case, the licensee must make a written request to the board for a hearing within ten (10) days after notice of the grounds or charges has been received.

(3) When a multiple type establishment is licensed by the department, the denial or cancellation of the license may affect the entire establishment or only a portion of it as determined by the department (a multiple type establishment includes two or more of the following: hotel, motel, or tourist home).

(4) On cancellation of a license or the right to operate one or more of the multiple type establishments under same license, the license certificate shall be returned to the department for destruction or deletion of types of establishment as the department may direct in its notice of cancellation.

(5) When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this act, or a rule effective under this act.

**History:** En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment substituted references to department throughout the section for references to the executive officer of the department; deleted a next to last subsection which read "Any order made by the executive officer after hearing, as provided herein, denying or can-

celing any license may be reviewed by application for writ of review (certiorari) commenced in the district court of the county in which the licensed premises are located, within ten (10) days from the date of notice in writing of the executive officer's order of denial or canceling such license has been served upon him"; and made minor changes in phraseology, punctuation and style.

**34-306. Rules—co-operative agreements.** (a) The department may adopt and enforce rules to preserve the public health and safety. These rules shall relate to construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water supply, sewerage and sewage disposal system, refuse collection and disposal, registration and supervision, and fire and life safety code.

(b) The department is hereby authorized to enter into co-operative agreements with any of the state agencies or political subdivisions for the purpose of carrying out the provisions of this act, or any part thereof.

**History:** En. Sec. 6, Ch. 18, L. 1967; amd. Sec. 5, Ch. 485, L. 1973.

#### Amendments

The 1973 amendment deleted "and regulations" following "rules" in the first and second sentences of subsection (a); deleted from the end of the second sentence in subsection (a) a proviso requiring a public hearing on rules or regulations;

deleted the third sentence of subsection (a) which provided for notice of the public hearing; and inserted "and fire and life safety code" at the end of the second sentence in subsection (a).

#### Repealing Clause

Section 6 of Ch. 485, Laws 1973 read "Section 34-308, R. C. M. 1947, is repealed."

**34-307. Inspections.** (a) The department, through its employees, and through local, county and district health officers, sanitarians, or other authorized representatives, shall make all necessary investigations and inspections for enforcement of this act. Each local, county or district health officer, sanitarian, or other authorized representative shall make regular inspections as the rules and regulations of the department may direct, and such special inspections as the department may from time to time direct, and he shall make such reports relative to conditions existing within his district at such times and in such manner as the department may direct.

(b) All persons authorized by this act or by regulations adopted under this act shall have free access at all reasonable hours to any of the establishments listed and defined in section 2 [34-302], for the purpose of making inspections.

**History:** En. Sec. 7, Ch. 18, L. 1967;  
amd. Sec. 107, Ch. 349, L. 1974.

**Amendments**

The 1974 amendment substituted "department" for "board" in three places in the last sentence of subsection (a).

**34-308. Repealed.**

**Repeal**

Section 34-308 (Sec. 8, Ch. 18, L. 1967), giving the board authority to issue sub-

poenas and take testimony, was repealed by Sec. 6, Ch. 485, Laws 1973.

**34-309. Penalty.** Any person violating any provision of this act or regulation made hereunder shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) for the first offense, and not less than seventy-five dollars (\$75) nor more than two hundred dollars (\$200) for the second offense; and for the third and subsequent offenses, by a fine of not less than two hundred dollars (\$200) and imprisonment in the county jail not to exceed ninety (90) days.

**History:** En. Sec. 9, Ch. 18, L. 1967.

**34-310. License fee—supersedes other fees.** Payment of the license fee stipulated herein shall be accepted in lieu of any and all existing state fees and charges for like purposes or intent which may be existent prior to the adoption of this act.

**History:** En. Sec. 10, Ch. 18, L. 1967.

**Separability Clause**

Section 11 of Ch. 18, Laws 1967 read "If any clause, sentence, paragraph, section or part of this act, shall for any reason, be adjudged or decreed to be invalid by any court of competent jurisdiction, such judgment or decree shall not affect, impair nor invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which said judgment or decree shall have been rendered."

**Repealing Clause**

Section 12 of Ch. 18, Laws 1967 read "All acts or parts of acts in conflict herewith are hereby repealed and specifically sections 34-201, 34-202, 34-203, 34-204, 34-205, 34-206, 34-207, 34-208, 34-209, 34-210, 34-211, 34-212, 34-213, 34-214, 34-215, 34-216, 34-217, Revised Codes of Montana, 1947."

**Effective Date**

Section 13 of Ch. 18, Laws 1967 read "This act shall be effective January 1, 1968."





## TITLE 35—HOUSING

Chapter 1. Housing authorities law, 35-103, 35-109, 35-115, 35-128, 35-129.

### CHAPTER 1—HOUSING AUTHORITIES LAW

- Section 35-103. Definitions.  
35-109. Powers of authority.  
35-115. Form and sale of bonds.  
35-128. Notice, hearing and creation of authority for a county.  
35-129. Commissioners and powers of authority for a county.

**35-103. (5309.3) Definitions.** The following terms, wherever used or referred to in this act shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) to (18). \* \* \* [Same as parent volume.]

(19) “Elderly families” shall mean families the head of which (or his spouse) is sixty (60) years of age or over and who otherwise qualify as “persons of low income” within the meaning of the definition set forth in (18) above.

History: En. Sec. 3, Ch. 140, L. 1935;  
amd. Sec. 1, Ch. 193, L. 1957; amd. Sec. 1,  
Ch. 133, L. 1973.

#### Amendments

The 1973 amendment reduced the minimum age specified in subdivision (19) from 65 to 60 years.

**35-109. (5309.9) Powers of authority.** An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

To investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where unsafe, or unsanitary dwelling or housing conditions exist; to study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of clearing, re-planning and reconstruction of areas in which unsafe, or unsanitary dwelling or housing conditions exist, and the providing of dwelling accommodations for persons of low income, and to co-operate with any city, municipal or regional planning agency; to prepare, carry out and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof; to take over by purchase, lease or otherwise any housing project located within its boundaries undertaken by any government; to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project or any part thereof; to arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, re-planning, installing, opening or closing of streets, options or property

rights or for the furnishing of property or services in connection with a project;

To arrange with the state, its subdivision and agencies, and any county, city or municipality of the state, to the extent that it is within the scope of each of their respective functions, (a) to cause the services customarily provided by each of them to be rendered for the benefit of such housing authority and/or the occupants of any housing projects and (b) to provide and maintain parks and sewage, water and other facilities adjacent to or in connection with housing projects and (c) to change the city or municipality map, to plan, replan, zone or rezone any part of the city or municipality; to lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures or facilities embraced in any housing project and to establish and revise the rents or charges therefor; to enter upon any building or property in order to conduct investigations or to make surveys or soundings; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, municipality, or government;

To acquire by eminent domain any real property, including improvements and fixtures thereon; to sell, exchange, transfer, assign, or pledge any property real or personal or any interest therein to any person, firm, corporation, municipality, city, or government; to own, hold, clear and improve property, to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable; to procure insurance or guarantees from a federal government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any housing project;

To borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues, and (subject to the limitations hereinafter imposed) by mortgages upon property held or to be held by it, or in any other manner; in connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof or to undertake additional housing projects; in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this act; to invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control;

To sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority to make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this act, to carry into effect the powers and purposes of the authority;

To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information;



To issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the authority, or excused from attendance; and to make available to such agencies, boards or commissions as are charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

Any of the investigations or examinations provided for in this act may be conducted by the authority or by a committee appointed by it, consisting of one or more commissioners, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, take affidavits and issue subpoenas or commissions.

An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific housing project or projects, through or by an agent or agents which it may designate, including any corporation or corporations which are or shall be formed under the laws of this state, and for such purposes an authority may cause one or more corporations to be formed under the laws of this state or may acquire the capital stock of any corporation or corporations.

Any corporate agent, all of the stock of which shall be owned by the authority or its nominee or nominees, may to the extent permitted by law exercise any of the powers conferred upon the authority herein. In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this act. No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

History: En. Sec. 9, Ch. 140, L. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974.

#### Amendments

The 1974 amendment deleted a final paragraph requiring authorization of projects by ordinances approved by the voters.

**35-115. (5309.15) Form and sale of bonds.** The bonds of the authority shall be authorized by its resolution and shall be issued in one or more series and shall bear such date or dates, mature at such time or times, not exceeding sixty (60) years from their respective dates, bear interest at such rate or rates, be in such denominations (which may be made interchangeable) be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution or its trust indenture or mortgage may provide.

The bonds may be sold at public sale held after notice published once at least ten (10) days prior to such sale in a newspaper having a

general circulation in the city and in a financial newspaper published in the city of \_\_\_\_\_ or in the city of \_\_\_\_\_, provided, however, that such bonds may be sold to the federal government at private sale without any public advertisement. The bonds may be sold at such price or prices as the authority shall determine.

Pending the authorization, preparation, execution or delivery of definitive bonds, the authority may issue interim certificates, or other temporary obligations to the purchaser of such bonds. Such interim certificates, or other temporary obligations, shall be in such form, contain such terms, conditions and provisions, bear such date or dates, and evidence such agreements relating to their discharge or payment or the delivery of definitive bonds as the authority may by resolution, trust indenture or mortgage determine.

In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery.

The authority shall have power out of any funds available therefor to purchase any bonds issued by it at a price not more than the principal amount thereof and the accrued interest; provided, however, that bonds payable exclusively from the revenues of a designated project or projects shall be purchased out of any such revenues available therefor. All bonds so purchased shall be canceled. This paragraph shall not apply to the redemption of bonds.

Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to this act shall be fully negotiable.

History: En. Sec. 15, Ch. 140, L. 1935; amd. Sec. 37, Ch. 234, L. 1971.

#### Amendments

The 1971 amendment deleted "not exceeding six per centum (6%) per annum

payable semiannually" after "bear interest at such rate or rates" near the middle of the first paragraph; deleted the proviso to the second sentence of the second paragraph; and made a minor change in style.

**35-128. (5309.27A) Notice, hearing and creation of authority for a county.** (1) to (5) \* \* \* [Same as parent volume.]

(6) The area of operation of such authority shall include said county, but in no event shall it include any city unless a resolution shall have been adopted by the governing body of the city (and by any authority which shall have been theretofore established and authorized to exercise its powers in the city) declaring that there is need for the county authority to exercise its powers within that city; provided, however, that such resolution shall not be effective until it has been approved by a majority vote of the electors within the corporate limits of such city or town voting either at a special or general election. If, after the adoption of such resolution or resolutions, an authority is established for any city within the county, the county authority shall have no power to initiate any further housing projects within such city without the consent, by resolution, of the governing body thereof and of the authority established for such city.

If the board of county commissioners, after a hearing as aforesaid, shall determine that neither of the above enumerated conditions exist, it shall adopt a resolution denying the petition. After three (3) months shall have expired from the date of the denial of any such petitions, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

(7) \* \* \* [Same as parent volume.]

**History:** En. Sec. 5, Ch. 153, L. 1941;  
amd. Sec. 1, Ch. 281, L. 1971.

#### **Amendments**

The 1971 amendment rewrote the first paragraph of subsection (6). For prior text, see parent volume.

**35-129. Commissioners and powers of authority for a county.** The commissioners of a housing authority created for a county may be appointed and removed by the board of county commissioners of the county in the same manner as the commissioners of a housing authority created for a city may be appointed and removed by the mayor, and except as otherwise provided herein, each housing authority created for a county and the commissioners thereof shall have the same functions, rights, powers, duties and limitations provided for housing authorities created for cities and the commissioners of such housing authorities; provided, that for such purposes the term "mayor" or "council" as used in the housing authorities law and any amendments thereto shall be construed as meaning "board of county commissioners," the term "city clerk" as used therein shall be construed as meaning "county clerk," the term "city" as used therein shall be construed as meaning "county" and the term "ordinance" shall be construed as meaning "resolution" unless a different meaning clearly appears from the context.

**History:** En. Sec. 5, Ch. 153, L. 1941;  
amd. Sec. 2, Ch. 281, L. 1971; amd. Sec. 2,  
Ch. 259, L. 1974.

proviso making the last paragraph of section 35-109 (deleted by 1974 amendment) inapplicable to projects by a county housing authority outside city limits.

#### **Amendments**

The 1971 amendment inserted "and the term 'ordinance' shall be construed as meaning 'resolution'" in the first proviso; added the second proviso; and made a minor change in punctuation.

The 1974 amendment deleted a final

#### **Effective Date**

Section 3 of Ch. 281, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 10, 1971.





## TITLE 36—HUSBAND AND WIFE

### Chapter 2. Conciliation law, 36-201 to 36-205.

#### CHAPTER 1—HUSBAND AND WIFE—MUTUAL OBLIGATIONS, POWERS AND PROPERTY RIGHTS

##### 36-101. (5782) Mutual obligations of husband and wife.

###### Cross-Reference

Cause of action for alienation of affections abolished, sec. 17-1201.

###### Action for Loss of Consortium

A wife can maintain an action for loss of consortium when such loss is the result of negligent injury to her husband. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 73; *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298,

299, distinguished in *Hall v. United States*, 266 FSupp 671.

Under section 48-101 and this section a woman by her marriage obtains a contractual right to consortium. *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300.

###### References

*Clark v. Clark*, 143 M 183, 387 P 2d 907.

##### 36-108. (5789) May be joint tenants.

###### Proceeds from Sale of Real Property

In absence of agreement to the contrary, proceeds of a sale of joint tenancy

property pursuant to a contract are held in joint tenancy. In re *Estate of Rickner*, — M —, 518 P. 2d 1160.

##### 36-110. (5791) Married women may prosecute actions.

###### Action for Loss of Consortium

A wife can maintain an action for loss of consortium when such loss is the result of negligent injury to her husband. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 73; *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 299, distinguished in *Hall v. United States*, 266 FSupp 671.

###### Removal of Common-law Disability

This section and section 36-128 are procedural and create no new rights, but only remove the common-law disability of married women to enforce their rights otherwise created and existing. *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300.

##### 36-122. (5803) Rights of husband and wife, etc.

###### Divorce

This chapter is not controlling after dis-

solution of the marriage by divorce. *Cook v. Cook*, 159 M 98, 495 P 2d 591.

##### 36-128. (5809) May sue and be sued.

###### History Correction

History: En. Sec. 1444, 5th Div. Comp. Stat. 1887, re-en. Sec. 253, Civ. C. 1895; re-en. Sec. 3733, Rev. C. 1907; re-en. Sec. 5809, R. C. M. 1921.

###### Action for Loss of Consortium

A wife can maintain an action for loss of consortium when such loss is the result of negligent injury to her husband. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 73; *Dutton v. Hightower &*

*Lubrecht Constr. Co.*, 214 F Supp 298, 299, distinguished in *Hall v. United States*, 266 FSupp 671.

###### Removal of Common-law Disability

This section and section 36-110 are procedural and create no new rights, but only remove the common-law disability of married women to enforce their rights otherwise created and existing. *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300.

#### CHAPTER 2—CONCILIATION LAW

##### Section 36-201. Manner of citation.

36-202. Purposes—definitions—where applicable.

36-203. Conciliation court—judges—budget—conciliation counselors—probation officers—proceedings confidential.

36-204. Procedure.

36-205. Powers of the court.

**36-201. Manner of citation.** This act may be cited as the "Montana Conciliation Law."

**History:** En. Sec. 1, Ch. 238, L. 1963.

**Title of Act**

An act constituting the several district courts, courts of conciliation for the purpose of protecting the rights of children and to promote and protect the family life and the institution of matrimony by providing a means for reconciliation of spouses and the amicable settlement of domestic and family controversies, and specifically where minor children are involved; defining the jurisdiction of said courts and to establish such courts which requires a determination by the judge or judges of the district whether such conciliation court is necessary in said district; providing for the designation of a judge to handle conciliation cases, necessary personnel, and payment of the expenses of said courts of conciliation by the respective counties in which said court is

functioning; the manner of holding conferences, privacy of hearings, proceedings and recommendations; no fees to be charged, the hearings to be informal, stay of divorce proceedings for not to exceed thirty days to give the parties an opportunity for a reconciliation conference, transfer of cases to the conciliation court when it appears that the welfare of minors is going to be seriously affected and permitting the jurisdiction of the conciliation court where no minors are involved if it appears that a reconciliation may be had, granting the conciliation court the same powers as a district court under the Constitution of the state of Montana, Article 8, Section 1, section 93-301 to 93-321 inclusive, Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of judges of courts of conciliation.

**36-202. Purposes—definitions—where applicable.** (1) Purposes. The purposes of this chapter are to protect the rights of children and to promote the public welfare by preserving, promoting, and protecting family life and the institution of matrimony, and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies.

(2) Definitions. As used in this chapter "shall" is mandatory and "may" is permissive.

(3) Applicability of the Law—Determination by District Court. The provisions of this chapter shall be applicable only in counties in which the district court determines that the social conditions in the county and the number of domestic relations cases in the courts render the procedures herein provided necessary to the full and proper consideration of such cases and the effectuation of the purposes of this chapter. Such determination shall be made annually in the month of January or July by the judge of the district court in counties having only one such judge, and by a majority of the judges of the district court in counties having more than one such judge.

**History:** En. Sec. 2, Ch. 238, L. 1963.

**36-203. Conciliation court—judges—budget—conciliation counselors—probation officers—proceedings confidential.** (1) Exercise of Jurisdiction. Each district court shall exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of such jurisdiction shall be known and referred to as the "conciliation court."

(2) Selection of Judges. In counties having more than one judge of the district court, the judges of such court shall annually, in the month of January or July, designate at least one judge to hear all cases under this chapter. The judge or judges so designated shall hold as many sessions of the conciliation court in each week as are necessary for the prompt disposition of the business before the court.



(3) **Transfer of Cases.** Another district judge may be called in by the judge of the conciliation court to act as judge of the conciliation court during any period when the judge of the conciliation court is on vacation, absent, or for any reason unable to perform his duties. Any judge so appointed shall have all of the powers and authority of a judge of the conciliation court in cases under this chapter.

(4) **Budget.** The provisions of the county budget system, section[s] 16-1901 to 1911, inclusive, R.C.M. 1947, shall, except as provided by section 4, subsection 9 [36-204 (9)] of this act, be applicable to expenditures for the court of conciliation; provided, however, that the court may submit to the board of county commissioners the information required by section 16-1901 on or before July 1st of each year.

(5) **Manner of Conciliation.** The judge of the conciliation court may hear all matters invoked under this act or he may refer such matters to a pastor or director of any religious denomination to which the parties may belong, psychiatrist, physician, attorney, social worker, or other person who is competent and qualified by training and experience in personal counseling. Such person shall be referred to herein as the conciliation counselor.

**The conciliation counselor shall:**

(a) Hold conciliation conferences with parties to, and hearings in, proceedings under this chapter, and make recommendations concerning such proceedings to the judge of the conciliation court.

(b) Cause such reports to be made, such statistics to be compiled, and such records to be kept as the judge of the conciliation court may direct.

(6) **Probation Officers Duties.** The probation officer in every county shall give such assistance to the conciliation court as the court may request to carry out the purposes of this chapter, and to that end the probation officer shall, upon request and with the consent of both parties, make investigations and reports as requested, and in cases pursuant to this chapter, shall exercise all the powers and perform all the duties granted or imposed by the laws of this state relating to probation or to probation officers.

(7) **Privacy of Hearings.** All district court hearings or conferences in proceedings under this chapter shall be held in private and the court shall exclude all persons except the officers of the court, the parties, their counsel and witnesses. Conferences may be held with each party and his counsel separately and in the discretion of the judge or counselor conducting the conference or hearing, all counsel may be excluded. All communications, verbal or written, from parties to the judge or counselor in a proceeding under this chapter shall be deemed made to such officer in official confidence.

The files of the conciliation court shall be closed. The petition, supporting affidavit, reconciliation agreement and any court order made in the matter may be opened to inspection by any party or his counsel upon the written authority of the judge of the conciliation court.

(8) **Jurisdiction.** The jurisdiction of the conciliation courts and the powers thereof shall be as provided in the constitution of Montana, chapter 3 [Title 93], Revised Codes of Montana, 1947, and acts amenda-

tory and relating thereto, including the right of disqualification of any judge of the conciliation court.

History: En. Sec. 3, Ch. 238, L. 1963;  
amd. Sec. 16, Ch. 100, L. 1973.

#### Amendments

The 1973 amendment deleted "Article 8, Section 1" following "constitution of Montana" in subsection (8).

**36-204. Procedure.** (1) Whenever any controversy exists between the spouses which may, unless a reconciliation is achieved, result in the dissolution or annulment of the marriage or in the disruption of the household, and there is any minor child of the spouses or of either of them whose welfare might be affected thereby, the conciliation court shall have jurisdiction over the controversy, and over the parties thereto and all persons having any relation to the controversy as further provided in this chapter.

(2) Prior to the filing of any action for divorce, annulment or separate maintenance, either spouse, or both spouses, may file in the conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties, or for amicable settlement of the controversy between the spouses, so as to avoid further litigation over the issue involved.

(3) The petition shall be captioned substantially as follows:

District Court of the State of Montana  
For the County of \_\_\_\_\_

Upon the petition of _____ Petitioner	}	Petition for Conciliation (Under the Conciliation Court Law)
And concerning _____ and _____ Respondents.	}	

To the Conciliation Court:

(4) The petition shall:

(a) Allege that a controversy exists between the spouses and request the aid of the court to effect a reconciliation or an amicable settlement of the controversy.

(b) State the name and age of each minor child whose welfare may be affected by the controversy.

(c) State the name and address of the petitioner, or the names and addresses of the petitioners.

(d) If the petition is presented by one spouse only, name the other spouse as a respondent, and state the address of that spouse.

(e) Also name as a respondent any other person who has any relation to the controversy, and state the address of the person, if known to the petitioner.

(f) State such other information as the court may by rule require.

(5) The clerk of the court shall provide, at the expense of the county, blank forms for petitions for filing pursuant to this chapter. The probation officers of the county and the attaches and employees of the conciliation court shall assist any person in the preparation and presentation of any such petition, when any person requests such assistance. All public officers in each county shall refer to the conciliation court all petitions and complaints made to them in respect to controversies within the jurisdiction of the conciliation court.

(6) No Fees. No fee shall be charged by any officer for filing the petition, nor shall any fee be charged by any officer for the performance of any duty pursuant to this chapter.

(7) Time and Place of Hearings. The court shall fix a reasonable time and place for hearing on the petition, and shall cause such notice of the filing of the petition and the time and place of the hearing as it deems necessary to be given to the respondents. The court may, when it deems it necessary, issue a citation to any respondent requiring him to appear at the time and place stated in the citation, and may require the attendance of witnesses as in other civil cases.

(8) For the purpose of conducting hearings pursuant to this chapter, the conciliation court may be convened at any time and place within the district, and the hearing may be had in chambers or otherwise, except that the time and place for hearing shall not be different from the time and place provided by law for the trial of civil actions if any party, prior to the hearing, objects to any different time or place.

(9) Hearings Informal. The hearing shall be conducted informally as a conference or series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues of the controversy. To facilitate and promote the purposes of this act the court may, with the consent of both of the parties to the proceeding, recommend or invoke the aid of physicians or psychiatrists, or other specialists or scientific experts, or of the pastor or director of any religious denomination to which the parties may belong. Such aid, however, shall not be at the expense of the court or of the county, unless the county commissioners of the county specifically provide and authorize such aid.

(10) Orders—Effective Time—Reconciliation Agreement. At or after hearing, the court may make such orders in respect to the conduct of the spouses and the subject matter of the controversy as the court deems necessary to preserve the marriage or to implement the reconciliation of the spouses, but in no event shall such orders be effective for more than thirty (30) days from the hearing of the petition, unless the parties mutually consent to a continuation of such time.

Any reconciliation agreement between the parties may be reduced to writing and, with the consent of the parties, a court order may be made requiring the parties to comply fully therewith.

(11) During a period beginning upon the filing of the petition for conciliation and continuing until thirty (30) days after the hearing of the petition for conciliation, neither spouse shall file any action for divorce, annulment of marriage, or separate maintenance.



If, however, after the expiration of such period, the controversy between the spouses has not been terminated, either spouse may institute proceedings for divorce, annulment of marriage or separate maintenance. The pendency of a divorce, annulment, or separate maintenance action shall not operate as a bar to the instituting of proceedings for conciliation under this chapter.

(12) **Stay of Divorce Proceedings—Where Conciliation Petition Filed First.** Whenever any action for divorce, annulment of marriage, or separate maintenance is filed in the district court, and it appears to the court at any time during the pendency of the action that there is any minor child of the spouses or of either of them whose welfare may be adversely affected by the dissolution or annulment of the marriage or the disruption of the household, and that there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy, in accordance with the provisions of this chapter.

(13) **Jurisdiction Where No Minors Involved.** Whenever application is made to the conciliation court for conciliation proceedings in respect to a controversy between spouses, or a contested action for divorce, annulment, or separate maintenance, but there is no minor child whose welfare may be affected by the results of the controversy, and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved, and that the work of the court in cases involving children will not be seriously impeded by acceptance of the case, the court may accept and dispose of the case in the same manner as similar cases involving the welfare of children are disposed of. In the event of such application and acceptance, the court shall have the same jurisdiction over the controversy and the parties thereto or having any relation thereto that it has under this chapter in similar cases involving the welfare of children.

**History:** En. Sec. 4, Ch. 238, L. 1963.

**36-205. Powers of the court.** The conciliation court shall have the same powers as the district court under the constitution of the state of Montana, section[s] 93-301 to 93-321 inclusive, Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of judges of courts of conciliation.

**History:** En. Sec. 5, Ch. 238, L. 1963;  
amd. Sec. 17, Ch. 100, L. 1973.

**Amendments**

The 1973 amendment deleted "Article 8, Section 1" following the reference to the constitution.

## TITLE 37—INITIATIVE AND REFERENDUM

- Chapter 1. State initiative and referendum, 37-101 to 37-105, 37-107 to 37-109.  
2. Initiated constitutional amendments and conventions, 37-201 to 37-203.  
3. County initiative and referendum, 37-301 to 37-311.

### CHAPTER 1—STATE INITIATIVE AND REFERENDUM

- Section 37-101. Form of petition for referendum.  
37-102. Form of petition for initiative.  
37-103. County clerk to verify signatures.  
37-104. Notice to governor and proclamation.  
37-104.1. Attorney general's summary of referred or initiative measures—statement by secretary of state for referendum measures—placement on ballot.  
37-105. Certification and numbering of measures—constitutional amendments.  
37-107. Printing and distribution of measures.  
37-108. Canvass of votes.  
37-109. Who may petition—false signature—penalties.

**37-101. (99) Form of petition for referendum.** The following shall be substantially the form of petition for the referendum to the people on any act passed by the legislative assembly of the state of Montana:

#### Warning.

Any person signing any name other than his own to this petition, or signing the same more than once for the same measure at one election, or who is not, at the time of signing the same, a qualified elector of this state, is punishable by a fine of not exceeding five hundred dollars (\$500), or imprisonment in the penitentiary not exceeding two years, or by both such fine and imprisonment.

#### Petition for referendum.

To the Honorable \_\_\_\_\_, Secretary of State of the state of Montana:

We, the undersigned citizens and qualified electors of the state of Montana, respectfully order that Senate (House) Bill Number \_\_\_\_\_, entitled (title of act), passed by the \_\_\_\_\_ legislative assembly of the state of Montana, at the regular (special) session of said legislative assembly, shall be referred to the people of the state for their approval or rejection, at the regular, general, or special election to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and each for himself says: I have personally signed this petition; I am a qualified elector of the state of Montana; and my residence, post-office address, legislative representative district number, and voting precinct are correctly written after my name.

Name \_\_\_\_\_ Residence \_\_\_\_\_

Post-office address \_\_\_\_\_

If in city, street and number \_\_\_\_\_

Legislative representative district number \_\_\_\_\_

Voting precinct \_\_\_\_\_

(Here follow numbered lines for signatures.)

**History:** En. Sec. 1, Ch. 62, L. 1907; Sec. 106, Rev. C. 1907; re-en. Sec. 99, R. C. M. 1921; amd. Sec. 1, Ch. 454, L. 1973.

**Amendments**

The 1973 amendment substituted "qualified elector" for "legal voter" in the "Warning" and "Petition for referendum"; and inserted provision for the leg-

islative representative district number in the "Petition for referendum."

**Contents of Petition**

Statute prescribing form required for referendum petition was satisfied by petition stating ordinance number, title and date of session of city council at which ordinance was passed, even though full text of ordinance was not set forth in petition. *Tod v. City of Billings*, 149 M 462, 430 P 2d 620.

**37-102. (100) Form of petition for initiative.** The following shall be substantially the form of petition for any law of the state of Montana proposed by the initiative:

**Warning.**

Any person signing any name other than his own to this petition, or signing the same more than once for the same measure at one election, or who is not, at the time of signing the same, a qualified elector of this state, is punishable by a fine not exceeding five hundred dollars (\$500), or imprisonment in the penitentiary not exceeding two years, or by both such fine and imprisonment.

**Petition for Initiative.**

To the Honorable \_\_\_\_\_, Secretary of State of the State of Montana:

We, the undersigned qualified electors of the state of Montana, respectfully demand that the following proposed law shall be submitted to the qualified electors of the state of Montana, for their approval or rejection, at the regular, general, or special election to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and each for himself says:

I have personally signed this petition, and my residence, post-office address, legislative representative district, and voting precinct are correctly written after my name.

Name \_\_\_\_\_ Residence \_\_\_\_\_  
Post-office address \_\_\_\_\_  
If in city, street and number \_\_\_\_\_  
Legislative representative district \_\_\_\_\_  
Voting precinct \_\_\_\_\_

(Numbered lines for names on each sheet.)

Every such sheet for petitioner's signature shall be attached to a full and correct copy of the title and text of the measure so proposed by initiative petition; but such petition may be filed with the secretary of state in numbered sections, for convenience in handling, and referendum petitions may be filed in sections in like manner.

**History:** En. Sec. 2, Ch. 62, L. 1907; Sec. 107, Rev. C. 1907; re-en. Sec. 100, R. C. M. 1921; amd. Sec. 2, Ch. 454, L. 1973.

**Amendments**

The 1973 amendment substituted refer-

ences to qualified electors for references to legal voters in the "Warning" and "Petition for Initiative"; and inserted the provision for the legislative representative district in the Petition for Initiative.



37-103. (101) **County clerk to verify signatures.** The county clerk of each county in which any such petition shall be signed shall compare the signatures of the electors signing the same with their signatures on the registration books and blanks on file in his office, for the preceding general election, and shall thereupon attach to the sheets of said petition containing such signatures his certificate to the secretary of state, substantially as follows:

State of Montana, County of \_\_\_\_\_

To the Honorable \_\_\_\_\_, Secretary of State for Montana:

I, \_\_\_\_\_, county clerk of the county of \_\_\_\_\_, hereby certify that I have compared the signatures on (number of sheets) of the referendum (initiative) petition, attached hereto, with the signatures of said electors as they appear on the registration books and blanks in my office; and I believe that the signatures of (names of signers), numbering (number of genuine signatures in each whole or partial legislative representative district lying within the county boundaries), are genuine. As to the remainder of the signatures thereon, I believe that they are not genuine, for the reason that \_\_\_\_\_; and I further certify that \_\_\_\_\_ the following names (\_\_\_\_\_) do not appear on the registration books and blanks in my office.

Signed: \_\_\_\_\_

\_\_\_\_\_, County Clerk.

(Seal of Office)

By \_\_\_\_\_

Deputy \_\_\_\_\_

Every such certificate shall be prima facie evidence of the facts stated therein, and of the qualifications of the electors whose signatures are thus certified to be genuine, and the secretary of state shall consider and count only such signatures on such petitions as shall be so certified by said county clerks to be genuine; provided, that the secretary of state may consider and count such of the remaining signatures as may be proved to be genuine, and that the parties so signing were legally qualified to sign such petitions, and the official certificate of a notary public of the county in which the signer resides shall be required as to the fact for each of such last-named signatures; and the secretary of state shall further compare and verify the official signatures and seals of all notaries so certifying with their signatures and seals filed in his office. Such notaries' certificate shall be substantially in the following form:

State of Montana, \_\_\_\_\_ ss.

County of \_\_\_\_\_

I, \_\_\_\_\_, a duly qualified and acting notary public in and for the above-named county and state, do hereby certify: that I am personally acquainted with each of the following named electors whose signatures are affixed to the annexed petition, and I know of my own knowledge that they are qualified electors of the state of Montana, and of the county, legislative representative districts and precincts written after their several names in the annexed petition, and that their

residence and post-office address is correctly stated therein, to wit: (Names of such electors.)

In Testimony Whereof, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

Notary Public, in and for \_\_\_\_\_ County,  
State of Montana.

The county clerk shall not retain in his possession any such petition, or any part thereof, for a longer period than two days for the first two hundred signatures thereon, and one additional day for each two hundred additional signatures, or fraction thereof, on the sheets presented to him, and at the expiration of such time he shall forward the same to the secretary of state, with his certificate attached thereto, as above provided. The forms herein given are not mandatory, and if substantially followed in any petition, it shall be sufficient, disregarding clerical and merely technical errors.

**History:** En. Sec. 3, Ch. 62, L. 1907; Sec. 108, Rev. C. 1907; re-en. Sec. 101, R. C. M. 1921; amd. Sec. 3, Ch. 454, L. 1973.

districts" near the end of the notary's certificate; and made a minor change in style.

#### Amendments

The 1973 amendment inserted "in each whole or partial legislative representative district lying within the county boundaries" in the first sentence of the clerk's certificate; substituted "qualified electors" for "legal voters" in the notary's certificate; inserted "legislative representative

#### Sufficiency of Certification

City clerk's certification of petition for referendum presented on city ordinance simply identifying petition and stating "it has been determined that five per cent of the qualified electors have not signed" did not meet requirements of statute. *Tod v. City of Billings*, 149 M 462, 430 P 2d 620.

**37-104. (102) Notice to governor and proclamation.** Immediately upon the filing of any such petition for the referendum or the initiative with the secretary of state, signed by the number of electors and filed within the time required by the constitution, he shall notify the governor in writing of the filing of such petition, and the governor shall forthwith issue his proclamation, announcing that such petition has been filed, with a brief statement of its tenor and effect. Said proclamation shall be published four times for four consecutive weeks in one daily or weekly paper in each county of the state of Montana.

**History:** En. Sec. 4, Ch. 62, L. 1907; re-en. Sec. 109, Rev. C. 1907; re-en. Sec. 102, R. C. M. 1921; amd. Sec. 4, Ch. 454, L. 1973.

#### Amendments

The 1973 amendment substituted "electors" for "voters" in the middle of the first sentence.

**37-104.1. Attorney general's summary of referred or initiative measures—statement by secretary of state for referendum measures—placement on ballot.** The secretary of state of the state of Montana prior to certifying and numbering of referendum, initiative or constitutional amendment to the several counties of Montana as provided by sections 37-105 and 23-1102 [23-3506] of the Revised Codes of Montana, 1947, shall transmit a copy of the measure to be voted upon to the attorney general of Montana. Within ten (10) days after the measure is filed with him, the attorney general shall provide and return to the secretary of state a statement in ordinary plain language explaining in not more than one hundred (100)

words the general purpose of the measure submitted. In the case of referendum measures, the secretary of state shall prepare a statement setting forth the vote by which the referendum passed each house of the legislative assembly. The statement by the secretary of state shall precede the attorney general's statement on the printed form. The statement as prepared by the attorney general, and the statement of the secretary of state for referendum measures only, shall be in addition to the legislative title of the measure, the statement of the secretary of state for referendum measures only and the statement of the attorney general shall precede the other title of the measure. In providing the statement, the attorney general shall give a true and impartial statement of the purpose of the measure in plain, easily understood language and in such manner as shall not be an argument or likely to create prejudice either for or against the measure.

History: En. Sec. 1, Ch. 22, L. 1963; amd. Sec. 1, Ch. 21, L. 1969; amd. Sec. 1, Ch. 108, L. 1974.

tana and repealing all acts and parts of acts in conflict therewith.

#### Compilers' Notes

Section 23-1102, referred to in the first part of this section, was repealed by Sec. 248, Ch. 368, Laws 1969. For new law, see sec. 23-3506.

#### Title of Act

An act to require a true, plain and impartial statement of the meaning and purpose of any referendum, initiative or constitutional amendment submitted to the vote of the people of the state of Mon-

#### Amendments

The 1969 amendment inserted the provision relating to the statement by the secretary of state for referendum measures.

The 1974 amendment deleted from the end of the third sentence "and that it was signed by the governor."

#### Repealing Clause

Section 2 of Ch. 22, Laws 1963 repealed all acts and parts of acts in conflict therewith.

**37-105. (103) Certification and numbering of measures—constitutional amendments.** The secretary of state shall furnish the said county clerks his certified copy of the titles and numbers of the various measures to be voted upon at the ensuing general or special election, and he shall use for each measure a title designated for that purpose by the legislative assembly, committee, or organization presenting and filing with him the act, or petition for the initiative or the referendum, or in the petition or act; provided, that such title shall in no case exceed one hundred words, and shall not resemble any such title previously filed for any measure to be submitted at that election which shall be descriptive of said measure, and he shall number such measures. All measures shall be numbered with consecutive numbers beginning with the number immediately following that on the last measure filed in the office of the secretary of state. The affirmative and negative of each measure shall bear the same number, and no two measures shall be numbered alike. It shall be the duty of the several county clerks to print said titles and numbers on the official ballot prescribed by section 23-3506, in the numerical order in which the measures have been certified to them by the secretary of state. Measures proposed by the initiative shall be designated and distinguished from measures proposed by the legislative assembly by the heading "proposed petition for initiative."

All constitutional amendments submitted to the qualified electors of the state shall likewise be placed upon the official ballot prescribed by said section 23-3506 and no such amendment shall hereafter be submitted on a



separate ballot. Nothing herein contained shall be deemed to change the existing laws of the state regulating in other respects the manner of submitting such proposed amendments.

**History:** En. Sec. 5, Ch. 62, L. 1907; re-en. Sec. 110, Rev. C. 1907; amd. Sec. 1, Ch. 66, L. 1913; re-en. Sec. 103, R. C. M. 1921; amd. Sec. 1, Ch. 52, L. 1927; amd. Sec. 5, Ch. 454, L. 1973; amd. Sec. 2, Ch. 108, L. 1974.

#### Amendments

The 1973 amendment substituted references to section 23-3506 for references to

former section 23-1102 in the third sentence of the first paragraph and the first sentence of the second paragraph.

The 1974 amendment deleted after "secretary of state" in the first sentence "at the same time that he furnishes to the county clerk of the several counties certified copies of the names of the candidates for office."

**37-107. Printing and distribution of measures.** (1) The secretary of state shall furnish a copy of each of the proposed measures to be submitted to the people, and make requisition on the department of administration, for the printing and delivery to him of all proposed constitutional amendments, initiative, and referendum measures to be submitted to a vote of the people.

(2) The department of administration, shall, no later than five (5) weeks before any general or special election, at which any proposed law is to be submitted to the people, have printed a true copy of the title and text of each measure to be submitted, with the number and form in which the question will be printed on the official ballot. The department of administration shall call for bids and contract with the lowest responsible bidder for the printing of the proposed law to be submitted to the people.

(3) The proposed law to be submitted shall be printed in news type, each page to be six inches wide by nine inches long, and when the proposed measure constitutes less than six pages, it shall be printed flat and forwarded to the county clerk and recorder of each county in that form.

(4) When the proposed measure constitutes more than six pages, the measure shall be printed in pamphlet form, securely stapled, without cover. No proposed measure shall be bound. The quality of the paper to be used for the proposed measure shall be left to the discretion of the department of administration. The number of proposed measures to be printed shall be at least five per cent (5%) more than the number of qualified electors, as shown by the registration lists of the several counties of the state at the last preceding general election.

(5) The secretary of state shall distribute to each county clerk no later than four (4) weeks before the election at which the proposed measure(s) will be voted upon, a sufficient number of pamphlets to furnish one copy to every voter in his county. Each county clerk shall mail to [each registered voter in] the county at least one copy of the pamphlet within two (2) weeks from the date of his receipt of the pamphlets from the secretary of state.

**History:** En. Sec. 7, Ch. 62, L. 1907; Sec. 112, Rev. C. 1907; re-en. Sec. 105, R. C. M. 1921; amd. Sec. 1, Ch. 137, L. 1927; amd. Sec. 2, Ch. 104, L. 1945; amd. Sec. 1, Ch. 67, L. 1947; amd. Sec. 6, Ch. 454, L. 1973; amd. Sec. 3, Ch. 108, L. 1974; amd. Sec. 15, Ch. 326, L. 1974.

#### Compiler's Notes

This section was amended twice in

1974, once by Ch. 108 and once by Ch. 326. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments. The bracketed phrase in the second sentence of subsection (5) was

omitted in the amendment by Ch. 326, Laws of 1974.

#### Amendments

The 1973 amendment substituted "second month" for "third month" near the beginning of the second and last paragraphs; deleted the third and fourth sentences of the second paragraph, which distinguished between debt matters and others; inserted "at least" before "five per cent (5%)" in the fourth sentence of the fourth paragraph; substituted "qualified electors" for "registered voters" in the fourth sentence of the fourth paragraph; and substituted "the election at which the proposed measure(s) will be voted upon" for "such regular general election" in the first sentence of the last paragraph.

Chapter 108, Laws of 1974 substituted references to "department of administration" for "state purchasing agent" throughout the section; substituted "no later than five (5) weeks" for "not later

than the first Monday of the second month next" in the first sentence of subsection (2); substituted "no later than four (4) weeks before" for "before the second Monday in the second month next preceding" in the first sentence of subsection (5); and substituted "within two (2) weeks" for "within thirty (30) days" in the second sentence of subsection (5).

Chapter 326, Laws of 1974 inserted the numerical subsection designations at the beginning of the paragraphs; substituted references to "department of administration" for "state purchasing agent" throughout the section; deleted a third sentence in subsection (5) which read: "The mailing of said pamphlets to electors shall be a part of the official duty of the county clerk of each of the several counties, and his official compensation shall be full compensation for this additional service"; and made minor changes in phraseology and punctuation.

**37-108. (106) Canvass of votes.** The votes on measures and questions shall be counted, canvassed, and returned by the regular boards of judges, clerks, and officers as votes for candidates are counted, canvassed, and returned, and the abstract made by the several county clerks of votes on measures shall be returned to the secretary of state on separate abstract sheets in the manner provided by section 23-4015 for abstracts of votes for state officers. It shall be the duty of the state board of canvassers to proceed within thirty (30) days after the election at which such measures are voted upon, and sooner if the returns be all received, to canvass the votes given for each measure, and the governor shall forthwith issue his proclamation, giving the whole number of votes cast in the state for and against each measure and question, and declaring such measures as are approved by a majority of those voting thereon to be in effect the first day of July following its approval, unless the amendment provides otherwise, designating such measures by their titles.

**History:** En. Sec. 8, Ch. 62, L. 1907; Sec. 113, Rev. C. 1907; re-en. Sec. 106, R. C. M. 1921; amd. Sec. 1, Ch. 37, L. 1973; amd. Sec. 7, Ch. 454, L. 1973.

#### Compiler's Notes

This section was amended twice in 1973, once by Ch. 37 and once by Ch. 454. Neither amendatory act mentioned the other. The two amendments appear to conflict with respect to the section references substituted for the former references to section 23-1812 and 23-1813; in this respect, the compiler has used the text of Chapter 454, the later in time of approval. Since the amendments do not otherwise appear to conflict, the compiler has made a composite section embodying the other changes made by both amendments.

#### Amendments

Chapter 37, Laws of 1973, substituted a reference to sections 23-3314 and 23-4015 near the end of the first sentence for a reference to former sections 23-1812 and 23-1813; deleted from the second sentence a requirement that the governor's proclamation be published "in two daily newspapers printed at the capital"; substituted July 1 following approval for the date of the proclamation as the effective date of approved measures; inserted "unless the amendment provides otherwise" near the end of the section; and made minor changes in phraseology and style.

Chapter 454, Laws of 1973, substituted the reference to section 23-4015 near the end of the first sentence for a reference to former sections 23-1812 and 23-1813; and inserted "at which such measures are voted upon" near the beginning of the second sentence.

**37-109. (107) Who may petition—false signature—penalties.** Each qualified elector of the state of Montana may sign a petition for the referendum or for the initiative or for constitutional referendum or constitutional initiative. Any person signing any name other than his own to a petition, or signing one more than once for the same measure at one election, or who is not, at the time of signing a petition, a qualified elector of this state, or any officer or any person willfully violating any provision of this statute, shall, upon conviction thereof, be punished by a fine not exceeding five hundred dollars (\$500), or by imprisonment in the penitentiary not exceeding two (2) years, or by both.

**History:** En. Sec. 9, Ch. 62, L. 1907; Sec. 114, Rev. C. 1907; re-en. Sec. 107, R. C. M. 1921; amd. Sec. 4, Ch. 35, L. 1973; amd. Sec. 8, Ch. 454, L. 1973.

#### Compiler's Notes

This section was amended twice in 1973, once by Ch. 35 and once by Ch. 454. Neither amendatory act mentioned the other. Since the changes made by Ch. 35 included the change made by Ch. 454, the compiler has used the text of Ch. 35 above.

#### Amendments

Chapter 35, Laws of 1973, added references to the constitutional referendum

and constitutional initiative at the end of the first sentence; substituted "qualified elector" for "legal voter" in the middle of the second sentence; deleted "in the discretion of the court before which such conviction shall be had" at the end of the section; and made numerous minor changes in phraseology and style.

Chapter 454, Laws of 1973, substituted "qualified elector" for "legal voter" in the middle of the second sentence.

#### Repealing Clause

Section 9 of Ch. 454, Laws 1973 read "Section 23-2701.1, R. C. M. 1947, is repealed."

## CHAPTER 2—INITIATED CONSTITUTIONAL AMENDMENTS AND CONVENTIONS

- Section 37-201. Form for people's initiative petition on the question of calling a constitutional convention.  
 37-202. Form for people's initiative petition for constitutional amendment.  
 37-203. Time for filing petitions.

**37-201. Form for people's initiative petition on the question of calling a constitutional convention.** The following shall be substantially the form for the people's initiative petition on the question of calling a constitutional convention:

### WARNING

Any person signing any name other than his own to this petition, or signing the same more than once for the same measure at one election, or who is not, at the time of signing the same, a qualified elector of this state, is punishable by a fine not exceeding five hundred dollars (\$500), or imprisonment in the penitentiary not exceeding two (2) years, or by both. (Section 37-109, Revised Codes of Montana, 1947)

### PEOPLE'S INITIATIVE PETITION ON THE QUESTION OF CALLING A CONSTITUTIONAL CONVENTION

To the Honorable \_\_\_\_\_, Secretary of State of the state of Montana:

We, the undersigned qualified electors of the state of Montana, respectfully request that the question of whether there shall be an unlimited convention to revise, alter, or amend the constitution be sub-



mitted to the qualified electors of the state of Montana for their approval or rejection at the general election to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and each qualified elector says for himself:

I have personally signed this petition, and my residence, post-office address, and voting precinct are correctly written after my name.

Name \_\_\_\_\_ Residence \_\_\_\_\_

Post-office address \_\_\_\_\_

If in city, street and number \_\_\_\_\_

Voting precinct \_\_\_\_\_ Representative Dist. No. \_\_\_\_\_

(Each sheet shall be in substantially the form above and contain numbered lines for names.)

History: En. 37-201 by Sec. 1, Ch. 35, L. 1973.

constitution concerning constitutional revision by providing two (2) forms of people's initiative petitions, time for filing petitions, and amending section 37-109, R. C. M. 1947.

#### Title of Act

An act implementing article XIV, sections 2 and 9 of the 1972 Montana

**37-202. Form for people's initiative petition for constitutional amendment.** The following shall be substantially the form for people's initiative petition for constitutional amendment:

#### WARNING

Any person signing any name other than his own to this petition, or signing the same more than once for the same measure at one election, or who is not, at the time of signing the same, a qualified elector of this state, is punishable by a fine not exceeding five hundred dollars (\$500), or imprisonment in the penitentiary not exceeding two (2) years, or by both. (Section 37-109, Revised Codes of Montana, 1947)

#### PEOPLE'S INITIATIVE PETITION FOR CONSTITUTIONAL AMENDMENT

To the Honorable \_\_\_\_\_, Secretary of State of the state of Montana:

We, the undersigned qualified electors of the state of Montana, respectfully request that the following proposed constitutional amendment shall be submitted to the qualified electors of the state of Montana, for their approval or rejection, at the statewide election to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and each qualified elector says for himself:

I have personally signed this petition, and my residence, post-office address, and voting precinct are correctly written after my name.

Name \_\_\_\_\_ Residence \_\_\_\_\_

Post-office address \_\_\_\_\_

If in city, street and number \_\_\_\_\_

Voting precinct \_\_\_\_\_ Representative Dist. No. \_\_\_\_\_

(Each sheet for petitioner's signature shall be in substantially the form above and contain numbered lines for names. A full and correct copy of the title and text of the proposed constitutional amendment shall be included in or attached to each sheet of the petition.)

History: En. 37-202 by Sec. 2, Ch. 35, L. 1973.

**37-203. Time for filing petitions.** Petitions in this chapter shall be filed with the secretary of state on or before one hundred twenty (120) days prior to the election at which they are to be voted upon by the people.

**History:** En. 37-203 by Sec. 3, Ch. 35, L. 1973.

### CHAPTER 3—COUNTY INITIATIVE AND REFERENDUM

**Section 37-301.** Petition to initiate county resolution—adoption by board—submission to people—waiting period before re-enactment of resolution repealed by people.

37-302. Election at which initiative petition submitted.

37-303. Effective date of county commissioners' resolutions—appropriations—emergency measures.

37-304. Petition to refer commissioners' resolution to electors.

37-305. Election at which referred measure submitted—special election.

37-306. Special election ordered by commissioners—submission by commissioners at general election.

37-307. Issuance of proclamation—publication—posting.

37-308. Form of ballot—canvass of votes—proclamation of result.

37-309. Qualifications of electors.

37-310. Measures required to be submitted to electors.

37-311. Forms of petitions and proceedings.

**37-301. Petition to initiate county resolution—adoption by board—submission to people—waiting period before re-enactment of resolution repealed by people.** (1) Resolutions may be proposed by the legal voters of any county in this state, in the manner provided in this act. Fifteen per cent (15%) of the legal voters of any county may propose to the board of county commissioners a resolution on a subject within the legislative jurisdiction and powers of such county commissioners, or a resolution amending or repealing any prior resolution or resolutions. Petitions shall be filed with the county clerk. The county clerk shall present the same to the board at its first meeting next following the filing of the petition. The board may, within sixty (60) days after the presentation of the petition to the board, adopt the resolution as set forth in the petition. If the resolution proposed by the petition is passed without change, it shall not be submitted to the people, unless a petition for referendum demanding such submission is filed under the provisions of this act.

(2) If the board does not, within sixty (60) days, pass the resolution proposed in the petition, then the resolution proposed by the petition shall be submitted to the people. Before submitting such resolution to the people, the board may direct that a suit be brought in the district court in and for the county to determine whether the petition and ordinance are regular in form, and whether the ordinance so proposed would be valid and constitutional. The procedure for judicial review shall be the same as that provided for the cities in section 11-1104 (4) and (5).

(3) If a resolution is repealed pursuant to a proposal initiated by the qualified electors of a county as provided in this act, the board of commissioners may not, within a period of two (2) years thereafter, re-enact

such resolution or any resolution so similar thereto as not to be materially different therefrom. If during such two (2) year period the board enacts a resolution similar to the one repealed pursuant to initiative of the voters, a suit may be brought to determine whether the new resolution is a re-enactment without material change of the one so repealed. The same procedures set forth for cities shall apply to such suit and determination of the issues arising thereon. Nothing herein contained shall prevent exercise of the initiative herein provided for, at any time, to procure a re-enactment of a resolution repealed pursuant to initiative of the voters.

**History:** En. Sec. 1, Ch. 64, L. 1973.

plementing article XI, section 8 of the Montana constitution of 1972.

**Title of Act**

An act to extend the powers of initiative and referendum to Montana counties; im-

**Cross-References**

Initiative and referendum in cities, secs. 11-1104 to 11-1114.

**37-302. Election at which initiative petition submitted.** Any resolution proposed by petition which is entitled to be submitted to the people, shall be voted on at the next regular election to be held in the county, unless the petition asks that the same be submitted at a special election, and such petition is signed by not less than fifteen per cent (15%) of the electors qualified to vote at the last preceding county election.

**History:** En. Sec. 2, Ch. 64, L. 1973.

**37-303. Effective date of county commissioners' resolutions—appropriations—emergency measures.** No resolution passed by the board of county commissioners shall become effective until thirty (30) days after its passage, except general appropriation resolutions providing for the ordinary and current expenses of the county, excepting also emergency measures, and in the case of emergency measures the emergency must be expressed in the preamble or in the body of the measure, and the measure must receive a two-thirds ( $\frac{2}{3}$ ) vote of all the members of the board. Emergency resolutions shall include only such measures as are immediately necessary for the preservation of peace, health, and safety.

**History:** En. Sec. 3, Ch. 64, L. 1973.

**37-304. Petition to refer commissioners' resolution to electors.** During the thirty (30) days following the passage of any resolution, ten per cent (10%) of the qualified electors of the county may, by petition addressed to the board and filed with the county clerk, demand that such resolution, or any part or parts thereof, shall be submitted to the electors of the county.

**History:** En. Sec. 4, Ch. 64, L. 1973.

**37-305. Election at which referred measure submitted—special election.** Any measure on which a referendum is demanded under the provisions of this act shall be submitted to the electors of the county at the next county election provided the petition or petitions were filed with the county clerk at least thirty (30) days before such election. If such petition or petitions be signed by not less than fifteen per cent (15%) of



the qualified electors of the county, the measure shall be submitted at a special election to be held for the purpose.

History: En. Sec. 5, Ch. 64, L. 1973.

**37-306. Special election ordered by commissioners—submission by commissioners at general election.** The board of county commissioners may in any case order a special election on a measure proposed by the initiative, or when a referendum is demanded, or upon any resolution passed by the board and may likewise submit to the electors, at a general election, any resolution passed by the board.

History: En. Sec. 6, Ch. 64, L. 1973.

**37-307. Issuance of proclamation—publication—posting.** Whenever a measure is ready for submission to the electors, the clerk of the county shall, in writing, notify the board, who shall issue a proclamation setting forth the measure and the date of the election. Said proclamation shall be published one (1) day each week for four (4) consecutive weeks in each daily newspaper in the county, if there be such, otherwise in the weekly newspaper published in the county. In case there is no weekly newspaper published, the proclamation and the measure shall be posted conspicuously throughout the county.

History: En. Sec. 7, Ch. 64, L. 1973.

**37-308. Form of ballot—canvass of votes—proclamation of result.** The question to be balloted upon by the electors shall be printed on the initiative or referendum ballot, and the form shall be that prescribed by law for questions submitted at state elections. The referendum or initiative ballots shall be counted, canvassed, and returned by the regular board of judges, clerks, and officers, as votes for candidates for office are counted, canvassed, and returned. The returns for the questions submitted by the voters of the county shall be on separate sheets, and returned to the county clerk. The returns shall be canvassed in the same manner as the returns of regular elections for county and federal officers. The board shall issue a proclamation, as soon as the result of the final canvass is known, giving the whole number of votes cast in the county for and against such measure, and it shall be published in like manner as other proclamations herein provided for. A measure accepted by the electors shall take effect five (5) days after the vote is officially announced.

History: En. Sec. 8, Ch. 64, L. 1973.

**37-309. Qualifications of electors.** The qualifications for voting on questions submitted to the electors are the same as those required for voting for county commissioners.

History: En. Sec. 9, Ch. 64, L. 1973.

**37-310. Measures required to be submitted to electors.** The provisions of this act regarding the referendum shall not apply to resolutions which are required by any other law of the state to be submitted to the voters or the electors or taxpayers of any county.

History: En. Sec. 10, Ch. 64, L. 1973.

37-311. Forms of petitions and proceedings. The form of petitions and the proceedings under this act shall conform as nearly as possible, with the necessary changes as to details, to the provisions of the laws of the state relating to the initiative and referendum, and be regulated by such laws, except as otherwise provided in this act.

History: En. Sec. 11, Ch. 64, L. 1973.





## TITLE 38—INSANE AND FEEBLE-MINDED

- Chapter 1. The state hospital—management, 38-106.1 to 38-110, 38-120, 38-121.
2. Examination of persons mentally deranged—commitment, 38-207 to 38-210, 38-213.
  3. Transfer of state hospital patients to Boulder river school and hospital, 38-301 to 38-303.
  4. Examination and commitment of person as mentally deranged but not dangerous—voluntary application for admission, 38-401 to 38-405, 38-407, 38-408, 38-408.1.
  5. Convalescent leave of patients, 38-502 to 38-507.
  6. Eugenic sterilization law, Repealed—Section 1, Chapter 310, Laws of 1969.
  7. Alcoholism services center, Repealed—Section 15, Chapter 112, Laws of 1963; Section 101, Chapter 199, Laws of 1965.
  8. Montana state training school and hospital, Repealed—Section 10, Chapter 213, Laws of 1963; Section 82, Chapter 266, Laws of 1963; Section 101, Chapter 199, Laws of 1965.
  9. Leases of farm land for state hospital and state penitentiary authorized, Repealed—Section 82, Chapter 266, Laws of 1963.
  10. State department of mental hygiene, Repealed—Section 101, Chapter 199, Laws of 1965.

### CHAPTER 1—THE STATE HOSPITAL—MANAGEMENT

- Section 38-106.1. Definitions.
- 38-107. Department may send patient to friends.
- 38-108. May contract with some other institution.
- 38-109. Discharge of patients.
- 38-110. Maintenance of indigent persons on discharge.
- 38-120. Receipt of nonresident insane pending return to home state.
- 38-121. Terminology changed.

#### 38-101, 38-102. (1413) Repealed.

##### Repeal

These sections (Secs. 2260, 2261, Pol. C. 1895; Sec. 1, Ch. 57, L. 1913; Sec. 1, Ch. 76, L. 1943; Sec. 19, Ch. 266, L. 1963),

relating to the name and management of the state hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

#### 38-103. (1414) Repealed.

##### Repeal

This section (Sec. 2, Ch. 57, L. 1913), enumerating the powers and duties of

the board of the Montana state hospital, was repealed by Sec. 82, Ch. 266, Laws 1963.

#### 38-104. (1415) Repealed.

##### Repeal

This section (Sec. 3, Ch. 57, L. 1913; Sec. 1, Ch. 42, L. 1923; Sec. 1, Ch. 149, L. 1929; Sec. 1, Ch. 268, L. 1947; Sec. 20, Ch.

266, L. 1963), relating to the superintendent of the state hospital, was repealed by Sec. 101, Ch. 199, Laws 1965.

#### 38-105, 38-106. (1416, 1417) Repealed.

##### Repeal

These sections (Secs. 4, 5, Ch. 57, L. 1913), relating to the superintendent and

other staff members of the Montana state hospital, were repealed by Sec. 82, Ch. 266, Laws 1963.

**38-106.1. Definitions.** Unless the context requires otherwise, in Title 38: (1) "Department" means the department of institutions provided for in Title 82A, chapter 10.

(2) "State hospital" means the Warm Springs state hospital.

**History:** En. 38-106.1 by Sec. 3, Ch. 120, L. 1974.

#### Title of Act

An act for the codification and general revision of the laws relating to the department of institutions.

**38-107. (1418) Department may send patient to friends.** The department may, at the expense of the state, when satisfied it will be for the best interest of any insane person, send him to friends outside of the state.

**History:** En. Sec. 2280, Pol. C. 1895; re-en. Sec. 1121, Rev. C. 1907; re-en. Sec. 1418, R. C. M. 1921; amd. Sec. 21, Ch. 266, L. 1963; amd. Sec. 4, Ch. 120, L. 1974.

department of public institutions" at the beginning of the section for "The board."

The 1974 amendment substituted "The department" for "The department of public institutions."

#### Amendments

The 1963 amendment substituted "The

**38-108. May contract with some other institution.** The department may, when satisfied it will be for the best interest of any insane person in the state, send him to some other institution, with its consent, outside the state. The expense of sending and supporting him at such an institution must be paid by the state, if the person is indigent.

**History:** En. Sec. 2281, Pol. C. 1895; re-en. Sec. 1122, Rev. C. 1907; re-en. Sec. 1419, R. C. M. 1921; amd. Sec. 8, Ch. 213, L. 1963; amd. Sec. 22, Ch. 266, L. 1963; amd. Sec. 5, Ch. 120, L. 1974.

#### Amendments

Chapter 213, Laws 1963, substituted "department of public institutions" for "board" at the beginning of the section; and deleted from the end of the section a clause reading, "and the expense of sending and supporting him at such institution must be paid by the state, providing such person is indigent."

Chapter 266, Laws 1963, substituted "The department of public institutions" at the beginning of the section for "The board."

The 1974 amendment substituted "The department" for "The department of public institutions."

#### Compiler's Notes

This section was amended twice in 1963, once by Ch. 213 and once by Ch. 266. Neither amendatory act mentioned the other. Since the changes made by Ch. 213 included the change made by Ch. 266, the compiler has used the text of Ch. 213 above.

**38-109. (1421) Discharge of patients.** The department must discharge from the state hospital a patient, upon the written report of the hospital medical staff that the patient is in satisfactory mental condition to be discharged. The written report must be filed and kept in the office of the department, and every inmate on recovery must be ordered released, without requiring a sponsor.

**History:** En. Sec. 2283, Pol. C. 1895; re-en. Sec. 1124, Rev. C. 1907; re-en. Sec. 1421, R. C. M. 1921; amd. Sec. 1, Ch. 165, L. 1943; amd. Sec. 23, Ch. 266, L. 1963; amd. Sec. 6, Ch. 120, L. 1974. Cal. Pol. C. Sec. 2189.

beginning of the section and "the department" in the second sentence for "the board" in both places; and deleted "for the insane" following "Montana state hospital."

The 1974 amendment substituted "The department" for "The department of public institutions"; substituted "state hospital" for "Montana state hospital"; and made minor changes in phraseology.

#### Amendments

The 1963 amendment substituted "The department of public institutions" at the

**Opinion Required**

The written opinion of the hospital medical board and not that of a ward doctor is essential for the release of a

patient. *Petition of Smith*, 145 M 567, 403 P 2d 604.

**References**

*Petition of Kolocotronis*, 145 M 564 402 P 2d 977.

**38-110. Maintenance of indigent persons on discharge.** Upon the discharge of a patient from the state hospital, the department shall notify the board of public welfare of the county from which the patient was committed. The county board of public welfare shall at once ascertain whether the discharged patient is in financial need. If the patient is found to be in financial need, the county board of public welfare shall properly care for and maintain the discharged patient under the Public Welfare Act until the patient is able to care for himself, or until another provision has been made for care of the patient.

**History:** En. Sec. 2, Ch. 165, L. 1943; amd. Sec. 24, Ch. 266, L. 1963; amd. Sec. 7, Ch. 120, L. 1974.

**Amendments**

The 1963 amendment deleted "in addition to the financial aid required by sec-

tion 1422" after "Montana state hospital"; and substituted "the department" for "the board" in the same place.

The 1974 amendment substituted "state hospital" for "Montana state hospital"; and made minor changes in phraseology and punctuation.

**38-111. Repealed.****Repeal**

This section (Sec. 3, Ch. 165, L. 1943; Sec. 1, Ch. 153, L. 1957), relating to the

medical examination of patients, was repealed by Sec. 82, Ch. 266, Laws 1963.

**38-117. (1428) Repealed.****Repeal**

Section 38-117 (Sec. 2290, Pol. C. 1895),

relating to insane convicts, was repealed by Sec. 96, Ch. 120, Laws of 1974.

**38-118. (1429) Repealed.****Repeal**

This section (Sec. 2291, Pol. C. 1895), relating to nonresident insane persons,

was repealed by Sec. 2, Ch. 198, Laws 1963 and by Sec. 10, Ch. 213, Laws 1963.

**38-119. (1430) Repealed.****Repeal**

Section 38-119 (Sec. 2292, Pol. C. 1895; Sec. 25, Ch. 266, L. 1963), relating to

payment for care of nonindigent insane, was repealed by Sec. 96, Ch. 120, Laws of 1974.

**38-120. Receipt of nonresident insane pending return to home state.** An insane person, who is not a resident of this state, may be received into the state hospital for a period not to exceed thirty (30) days pending return to the state of his residence.

**History:** En. Sec. 1, Ch. 198, L. 1963; amd. Sec. 8, Ch. 120, L. 1974.

**Title of Act**

An act to permit reception of nonresident insane to state hospital pending return to state of residence and repealing section 38-118, Revised Codes of Montana, 1947.

**Amendments**

The 1974 amendment substituted "state hospital" for "Montana state hospital"; and made minor changes in phraseology.

**Repealing Clause**

Section 2 of Ch. 198, Laws 1963 read "Section 38-118, R.C.M. 1947, is hereby repealed."



**38-121. Terminology changed.** Any reference to the terms "insane" person, "incompetent" person, a person with a "mental disease or defect," persons "disordered in mind," persons "unable to handle their own affairs," persons "feeble-minded, moron, imbecile, idiot and mentally deranged," and all other like references in the Revised Codes of Montana, 1947, mean "of unsound mind."

**History:** En. Sec. 1, Ch. 376, L. 1973.

**Title of Act**

An act implementing article II, section 28, article IV, sections 2 and 4, and

article XII, section 3 (2) of the 1972 Montana constitution and H.B. 28 of this session providing the term "of unsound mind" to include other like terms in the Revised Codes of Montana, 1947.

## CHAPTER 2—EXAMINATION OF PERSONS MENTALLY DERANGED —COMMITMENT

### Section 38-207. Forms of certificates.

38-208. Commitment.

38-208.1. Admission of patients prior to legal commitment—when authorized.

38-208.2. Legal commitment within five days after emergency admission.

38-208.3. Cost of commitment proceedings.

38-209. Delivery of insane person at state hospital.

38-210. Moneys of insane person—disposal of.

38-213. Dissatisfied persons—procedure on question of insanity.

### 38-201. (1431) Examination before magistrate—affidavit, etc.

#### Fairness of Inquisition

Petitioner who was committed to state hospital was not deprived of his constitutional rights where it appeared that district judge and court attendants went to hospital to advise him of hearing date and his privilege to have counsel, his mother was present at the hearing, which was

held in the hospital, and everything was done by the court to see that petitioner's rights were protected and no advantage was taken of him. Petition of Kolocotronis, 145 M 564, 402 P 2d 977.

#### References

State v. Green, 143 M 234, 388 P 2d 362.

### 38-206. (1436) Certificate of physicians.

#### Disagreement by Physicians

Where medical jurors disagreed as to necessity of commitment of petitioner in mental institution, order of commitment

issued by district court was void and of no effect. Application of Bushman, 153 M 422, 458 P 2d 81.

**38-207. (1437) Forms of certificates.** The certificate must be made in the form prescribed by, and if available, on blanks furnished by the department of institutions.

**History:** En. Sec. 2306, Pol. C. 1895; re-en. Sec. 1140, Rev. C. 1907; re-en. Sec. 1437, R. C. M. 1921; amd. Sec. 26, Ch. 266, L. 1963; amd. Sec. 9, Ch. 120, L. 1974.

department of public institutions" at the end of the section for "board of the commissioners for the insane."

The 1974 amendment substituted "department of institutions" for "state department of public institutions"; and made minor changes in phraseology.

#### Amendments

The 1963 amendment substituted "state

**38-208. (1438) Commitment.** After the examination is completed and the certificate is filled out, if the judge believes the person so far disordered in his mind as to endanger health, person, or property, then he must issue an order that the person be confined in Warm Springs state hospital. A copy of the order must be filed and recorded by the clerk of the district court of the county. The clerk must also keep in convenient

form an index book, showing the name, age, and sex of each person so ordered to be confined in the state hospital, with the date of the order and the name of the insane asylum in which the person is ordered to be confined. No fees must be charged by the clerk for performing any of the duties provided for by this section or in this chapter

**History:** Ap. p. Sec. 2307, Pol. C. 1895; amd. Sec. 4, p. 163, L. 1897; re-en. Sec. 1141, Rev. C. 1907; re-en. Sec. 1438, R. C. M. 1921; amd. Sec. 4, Ch. 117, L. 1939; amd. Sec. 10, Ch. 120, L. 1974, Cal. Pol. C. Sec. 2171.

#### Amendments

The 1974 amendment substituted "Warm Springs state hospital" for "Montana state hospital"; and made minor changes in phraseology and punctuation.

**38-208.1. Admission of patients prior to legal commitment—when authorized.** The superintendent of the state hospital may admit a patient who has not been legally committed to the state hospital, when a patient is presented for admission accompanied by a certificate from the county physician in the county in which the patient resides. The certificate shall state that to the best of his knowledge this patient is suffering from acute mania or circular insanity and requires immediate hospitalization, and who, by reason of the absence of the district judge from the county of the patient's residence, has not been legally committed to the state hospital.

**History:** En. Sec. 1, Ch. 182, L. 1953; amd. Sec. 11, Ch. 120, L. 1974.

hospital" for "Montana state hospital"; and made minor changes in phraseology and punctuation.

#### Amendments

The 1974 amendment substituted "state

**38-208.2. Legal commitment within five days after emergency admission.** Within five (5) days after the admission to the state hospital of a patient who has not been legally committed as provided for in section 38-208.1, the superintendent of the state hospital shall either have the patient legally committed thereto by the district court of the third judicial district of the state of Montana in and for the county of Deer Lodge, or shall release and discharge the patient from the state hospital. If the district judge is absent, or if a jury trial is being held by the district judge, and prevents the handling of the commitment, the patient shall be legally committed as soon after the return of the district judge as possible, or as soon as the district judge is available to attend to the admission.

**History:** En. Sec. 2, Ch. 182, L. 1953; amd. Sec. 1, Ch. 92, L. 1957; amd. Sec. 12, Ch. 120, L. 1974.

#### Amendments

The 1974 amendment substituted "as provided for in section 38-208.1" for "as herein provided"; and made minor changes in phraseology and punctuation.

**38-208.3. Cost of commitment proceedings.** In all cases provided for by section 38-208.1 the costs of commitment proceedings shall be paid by the county of the patient's residence. After the order of commitment is signed by the district judge, the order and all other papers relative to the commitment of the person shall be forwarded by the clerk of the district court in and for the county of Deer Lodge, to the clerk of the district court of the county of the patient's residence, or of the county

from which the patient has been sent to the state hospital, and shall be placed on record and filed in that office. The order and papers shall not be placed on record and filed in the office of the clerk of the district court of Deer Lodge county, unless the patient is a resident of, or has been sent from Deer Lodge county.

History: En. Sec. 3, Ch. 182, L. 1953; amd. Sec. 1, Ch. 77, L. 1955; amd. Sec. 1, Ch. 127, L. 1957; amd. Sec. 13, Ch. 120, L. 1974.

#### Amendments

The 1974 amendment substituted "by section 38-208.1" for "by this act"; and made minor changes in phraseology and punctuation.

**38-209. (1439) Delivery of insane person at state hospital.** The insane person, together with the order of the judge, and the certificate of the physicians must be delivered to the sheriff of the county in which the order is made, or to a responsible relative or friend, as determined by the judge who signs the order, and by him must be delivered to the superintendent of the state hospital. The superintendent of the state hospital may refuse to receive any person upon any order, if the papers presented do not comply with the provisions of this chapter.

History: Ap. p. Sec. 2308, Pol. C. 1895; amd. Sec. 5, p. 164, L. 1897; re-en. Sec. 1142, Rev. C. 1907; re-en. Sec. 1439, R. C. M. 1921; amd. Sec. 5, Ch. 117, L. 1939; amd. Sec. 1, Ch. 181, L. 1957; amd. Sec. 14, Ch. 120, L. 1974. Cal. Pol. C. Sec. 2172.

#### Amendments

The 1974 amendment substituted "superintendent of the state hospital" for "officer in charge of the Montana state hospital" in the first sentence; deleted "or person in charge" after "superintendent" in the second sentence; and made minor changes in phraseology and punctuation.

**38-210. (1440) Moneys of insane person—disposal of.** When a person is adjudged insane and ordered committed to the state hospital, or is adjudged to be in such a condition of mind that he should be placed in the state hospital for observation, the money found on him at the time he is taken into custody must be certified to by the judge, and sent with the person to the state hospital. The money must be delivered to the superintendent of the state hospital, whose receipt for the money shall be taken by the officer or other person delivering him to the hospital, who must file the receipt with the clerk of the district court of the county in which the proceedings were held. If the amount exceeds one hundred dollars (\$100), the excess must be applied to the payment of the expenses of the person while in the hospital. If the amount is one hundred dollars (\$100) or less it must be kept and delivered to the person when discharged or released from the hospital or applied in payment of funeral expenses if the person dies while in the hospital. If an amount remains to the credit of a person paroled, discharged, or released, or after payment of the funeral expenses of the person who dies while in the hospital, and the amount remains unclaimed for one (1) year after the parole, discharge, release, or death, fifty per cent (50%) of the amount, but not in any event exceeding fifty dollars (\$50) shall be withdrawn from the account and placed in the agency fund in the state treasury, to be expended for indigent patients at the times and in the manner and for such purposes as may be prescribed by the superintendent of the hospital. A balance which remains to the credit of the person, shall be transmitted to the county



treasurer of the county from which the person was sent, and if a sum remains after paying the costs of hearing, and transportation to the hospital, the balance shall be paid into the state treasury to the credit of the general fund.

**History:** Ap. p. Sec. 2309, Pol. C. 1895; amd. Sec. 6, p. 164, L. 1897; re-en. Sec. 1143, Rev. C. 1907; re-en. Sec. 1440, R. C. M. 1921; amd. Sec. 6, Ch. 117, L. 1939; amd. Sec. 2, Ch. 76, L. 1943; amd. Sec. 231, Ch. 147, L. 1963; amd. Sec. 15, Ch. 120, L. 1974.

#### Amendments

The 1963 amendment substituted "the agency fund in the state treasury" for "the patients' deposit account, special account" in the fourth sentence.

The 1974 amendment substituted "state hospital" for "Montana state hospital" in the first sentence; and made minor changes in phraseology and punctuation.

**38-213. (1443) Dissatisfied persons—procedure on question of insanity.** (1) If a person ordered to be committed, or any friend in his behalf, is dissatisfied with the order of the judge committing him, he may, within five days after the making of the order, demand that the question of his sanity be tried by a jury before the district court of the county in which he was committed. That court must have a jury summoned and in attendance at a date stated, not less than five nor more than ten days from the date of the demand for a jury trial.

(2) At the trial the cause against the alleged insane must be presented by the county attorney of the county, and the trial must be had as provided by law for the trial of civil causes before a jury, and the alleged insane person must be discharged unless a verdict that he is insane is found by at least three-fourths of the jury.

(3) If the verdict of the jury is that he is insane, the judge must adjudge that fact and make an order of commitment as upon the original hearing. The order must be presented, at the time of commitment of the insane person, to the superintendent of the hospital to which the insane person is committed, and a copy of the order must be forwarded by the superintendent to the department of institutions and filed in its office.

(4) Proceedings under the order must not be stayed, pending the proceedings for determining the question of sanity by a jury, except upon the order of a district judge, with provision made in the order for the temporary care and custody of the alleged insane person as may be considered necessary. If the district judge, by the order granting the stay, commits the accused insane to the custody of any person other than a peace officer, he may, by the order, require a bond for his appearance at the trial. If a judge refuses to grant an application for an order of commitment of an insane person alleged to be dangerous to himself and others, if at large, he must state his reasons for refusal, and any person aggrieved by his refusal may demand a trial of the question of the insanity of the accused insane, in the manner provided in this section for a jury trial when demanded by or on behalf of the accused insane.

(5) \* \* \* [Same as parent volume.]

**History:** En. Sec. 7, p. 164, L. 1897; re-en. Sec. 1146, Rev. C. 1907; re-en. Sec. 1443, R. C. M. 1921; amd. Sec. 8, Ch. 117, L. 1939; amd. Sec. 16, Ch. 120, L. 1974.

#### Amendments

The 1974 amendment deleted "or person in charge" after "to the superintendent" in subsection (3); substituted "department

of institutions" for "board of commissioners for the insane" in subsection (3); and made minor changes in phraseology and punctuation.

### 38-214. (1444) Repealed.

#### Repeal

This section (Sec. 8, p. 165, L. 1897; Sec. 9, Ch. 117, L. 1939; Sec. 3, Ch. 76, L. 1943; Sec. 1, Ch. 49, L. 1955; Sec. 1,

Ch. 131, L. 1959), relating to the expense of maintenance of inmates of the Montana state hospital, was repealed by Sec. 10, Ch. 213, Laws 1963.

## CHAPTER 3—TRANSFER OF STATE HOSPITAL PATIENTS TO BOULDER RIVER SCHOOL AND HOSPITAL

Section 38-301. Transfer of patients to Boulder river school and hospital.

38-302. Admission of certain inmates at Warm Springs state hospital to Boulder river school and hospital.

38-303. Expenses of examination and transportation.

**38-301. (1444.1) Transfer of patients to Boulder river school and hospital.** (1) When a person is committed to the state hospital as an insane person, and the superintendent and physicians of the state hospital determine from examination, tests, and observation that the person is not a proper person to be confined in the state hospital but should properly be placed in the Boulder river school and hospital, the superintendent of the state hospital shall ascertain from the superintendent of the Boulder river school, whether or not there is room and accommodations for the person at that school.

(2) If there is room and accommodations for the person at the Boulder river school, the superintendent of the state hospital shall make a certificate in triplicate, which shall give the name of the person to be transferred, the county from which committed to the state hospital, the date of commitment and date received at the state hospital, and state as fully as possible therein the reasons why the person should be transferred from the state hospital to the Boulder river school. All three copies of the certificate shall be signed by the superintendent and all physicians of the hospital who have examined and observed the person while in the state hospital. One copy of the certificate shall be retained in the files of the state hospital, and one copy shall be transmitted to the clerk of the district court of the county from which the person was committed to the state hospital.

(3) The clerk of the district court, upon receiving a copy of the certificate, shall immediately give written notice to the relatives or guardian whose names are shown in the proceedings for the commitment of the person to the state hospital, or which are disclosed by any guardianship proceedings with regard to the person in the court, stating briefly the contents of the certificate and purpose thereof.

(4) Any such relative or guardian may make and file with the clerk of court, within ten (10) days after the date of notice, written protest or objection to the proposed transfer. If a written protest or objection is filed within the ten (10) days, the clerk of the court shall notify the district judge thereof, and the judge shall fix a time and place for the hearing of the protest and objection in open court, as will give reasonable

opportunity for the production and examination of witnesses. If no protest or objection is filed, or if a protest or objection is filed and a hearing held thereon, and the judge approves the transfer, the judge shall make an order approving the transfer, and the transfer may be made. However, if a protest or objection is filed, and after a hearing thereon, the judge makes an order disapproving the transfer, the transfer shall not be made.

(5) The clerk of the court shall, if no protest or objection is filed within the time provided, transmit a written notice, in duplicate, to the superintendent of the state hospital that no protest or objection has been filed. If a protest or objection has been filed and a hearing had thereon the clerk shall immediately, after the making of any order approving or disapproving the transfer, make a certified copy of the order, in duplicate, and transmit both copies to the superintendent of the state hospital.

(6) Upon receiving a written notice that no protest or objection has been filed, or upon receiving certified copies of an order approving the transfer, one of the notices or a certified copy of the order shall be placed in the files of the state hospital, and the superintendent of the state hospital may then have an attendant of the state hospital take the person and deliver him to the superintendent of the Boulder river school, together with a copy of the certificate and a copy of the notice or a certified copy of the order attached thereto, to the superintendent of the Boulder river school. The certificate is the superintendent's authority for receiving and keeping the person, and takes the place of any commitment thereto. The cost of transporting the person from the state hospital to the Boulder river school shall be paid out of funds appropriated for the maintenance of the state hospital.

**History:** En. Sec. 4, Ch. 76, L. 1943;  
amd. Sec. 17, Ch. 120, L. 1974.

#### **Amendments**

The 1974 amendment substituted "state hospital" for "Montana state hospital" and "hospital" throughout the section;

substituted "Boulder river school and hospital" or "Boulder river school" for "Montana state training school at Boulder" and "training school" throughout the section; and made minor changes in phraseology and punctuation.

**38-302. Admission of certain inmates at Warm Springs state hospital to Boulder river school and hospital.** If an inmate of the state hospital is not so far disordered in mind as to endanger health, person, or property but by reason of being feeble-minded is a proper person for admission to the Boulder river school and hospital, the person may be admitted to that school by proceedings in the district court of the county in which the state hospital is located. The proceedings shall be in compliance with the laws relating to the admission to the Boulder river school.

**History:** En. Sec. 1, Ch. 10, L. 1943;  
amd. Sec. 18, Ch. 120, L. 1974.

#### **Amendments**

The 1974 amendment substituted "state hospital" for "Montana state hospital";

substituted "Boulder river school and hospital" and "Boulder river school" for "Montana state training school"; and made minor changes in phraseology and punctuation.

**38-303. Expenses of examination and transportation.** The expenses of examination and transportation of the person shall be paid by the state hospital.



History: En. Sec. 2, Ch. 10, L. 1943;  
amd. Sec. 19, Ch. 120, L. 1974.

#### Amendments

The 1974 amendment substituted "state hospital" for "Montana state hospital"; and made minor changes in phraseology.

### 38-304. Repealed.

#### Repeal

This section (Sec. 3, Ch. 10, L. 1943), relating to the expense of clothing per-

sons transferred to the state training school, was repealed by Sec. 10, Ch. 213, Laws 1963.

## CHAPTER 4—EXAMINATION AND COMMITMENT OF PERSON AS MENTALLY DERANGED BUT NOT DANGEROUS—VOLUNTARY APPLICATION FOR ADMISSION

- Section 38-401. Examination of person mentally deranged but not dangerous—physician's certificate.
- 38-402. Judge's order—observation and examination.
- 38-403. Supplemental order when more time for observation necessary.
- 38-404. Release—certificate by superintendent.
- 38-405. If commitment advisable, procedure—disposition of certificates.
- 38-406.2. [Transferred.]
- 38-407. Trial by jury, when.
- 38-408. Duty of clerk of district court.
- 38-408.1. Voluntary admission for at least sixty days authorized—application—earlier release—proceedings for judicial commitment—right to release—costs of commitment proceedings—transportation costs.

**38-401. Examination of person mentally deranged but not dangerous—physician's certificate.** (1) When an affidavit has been made, warrant issued, hearing had thereon and examination made of the person named in the affidavit and warrant, in accordance with sections 38-201 to 38-205, inclusive, the physicians attending the hearing and making the examination, if they conclude that there is reason to believe that the person is disordered in his mind to some extent, but not to such an extent as to endanger health, person, or property, must make a certificate on a form prescribed by the superintendent of Warm Springs state hospital, showing as near as possible:

(a) That while they do not believe the person to be disordered in his mind to an extent as to endanger health, person, or property, they do believe that the person may be disordered in his mind to such an extent that he should be admitted to Warm Springs state hospital for further examination and observation.

(b) The premonitory symptoms, apparent cause of the disordered mind, and the extent and duration thereof.

(c) The nativity, age, residence, occupation, and previous habits of the person.

(d) The place where he came from, and the length of time he has resided in this state.

(e) The names of the nearest relatives, if known, and the name of the guardian of the person, if there is one, with their names and post-office addresses.

(2) The certificate must be filed in the office of the clerk of the district court of the county in which the hearing is held.

History: En. Sec. 1, Ch. 157, L. 1943;  
amd. Sec. 20, Ch. 120, L. 1974.

#### Amendments

The 1974 amendment substituted  
"Warm Springs state hospital" for "Mon-

tana state hospital" in the first paragraph  
of subsection (1) and in subdivision (1)  
(a); and made minor changes in phrase-  
ology, punctuation and style.

**38-402. Judge's order—observation and examination.** If the physicians' certificate provided for in section 38-401 is made and filed, the judge shall make an order directing that a person named in the certificate be placed in the state hospital for such time as he considers necessary, but which shall not be less than two (2) nor more than four (4) weeks, for observation and for further examination for the purpose of determining whether he is disordered in his mind, and if so, whether or not his mind is disordered to such an extent as to require commitment to the state hospital. The order shall designate the person to take him to the hospital. Certified copies of the physicians' certificate and of the order shall be given the person designated in the order, and the person so designated shall deliver the person to the state hospital and shall at the same time deliver to the superintendent thereof the certified copies of the physicians' certificate and order, and that shall be the authority of the superintendent for receiving, keeping, and detaining the person in the state hospital for the time specified in the order.

History: En. Sec. 2, Ch. 157, L. 1943;  
amd. Sec. 12, Ch. 120, L. 1974.

#### Amendments

The 1974 amendment substituted "state

hospital" for "Montana state hospital" and  
"hospital" throughout the section; and  
made minor changes in phraseology and  
punctuation.

**38-403. Supplemental order when more time for observation necessary.** When a person is received at the state hospital for observation under any order of a district judge made in accordance with section 38-402, the person may be kept in the state hospital not exceeding the maximum length of time specified in the order, during which time the superintendent and physicians of the state hospital shall give the person examinations, tests, and observation and treatment, if any, which they consider necessary to ascertain and improve his mental condition. If it appears to the superintendent and physicians, before the expiration of the maximum time specified in the order, that the time is not sufficient for them to determine or improve the mental condition of the person, the superintendent shall so notify in writing the district judge who made the order. The district judge or any district judge sitting or acting in his place, shall then make a supplemental order authorizing the detention of the person in the hospital for an additional length of time, not exceeding four (4) weeks in addition to the time specified in the original order. The written notice from the superintendent and the order shall be filed in the office of the clerk of the district court, and the clerk must immediately make a certified copy thereof and send it to the superintendent of the state hospital. The certified copy of the order is the authority for the superintendent to keep and detain the person in the hospital for the time specified in the order.

History: En. Sec. 3, Ch. 157, L. 1943;  
amd. Sec. 22, Ch. 120, L. 1974.

#### Amendments

The 1974 amendment substituted "state

hospital" for "Montana state hospital" and "hospital" throughout the section; and made minor changes in phraseology and punctuation.

**38-404. Release—certificate by superintendent.** If, while a person is being detained in the state hospital under an order, made in accordance with sections 38-402 and 38-403, the superintendent and physicians at the state hospital, from their examinations, tests and observations of the person, determine either that he is not disordered in his mind, or that he is disordered in his mind but not to such an extent as to justify his commitment, the superintendent shall release and discharge him from the state hospital. A certificate of release and discharge, in duplicate, shall be made stating the reasons the person was released and discharged from the state hospital, and the date of discharge and release. Each copy shall be dated and signed by the superintendent. One (1) copy of the certificate shall be retained in the files of the state hospital and the other copy shall be sent to the clerk of the district court of the county in which the hearing of the person was held, and filed by the clerk as a part of the records of the proceeding.

**History:** En. Sec. 4, Ch. 157, L. 1943; amd. Sec. 23, Ch. 120, L. 1974.

#### Amendments

The 1974 amendment substituted "state hospital" for "Montana state hospital"

and "hospital" throughout the section; inserted "of release and discharge" after "certificate" in the second sentence; and made minor changes in phraseology and punctuation.

**38-405. If commitment advisable, procedure—disposition of certificates.** (1) If, while a person is being detained in the state hospital under an order, made in accordance with sections 38-402 and 38-403, the superintendent and physicians of the hospital, from their examinations, tests and observations determine that the person is disordered in his mind to such an extent as to justify commitment to the state hospital, the superintendent shall make out, in duplicate, a certificate so stating and also stating in as much detail as he considers necessary, the apparent cause or class of the disorder, its progress, the probable duration and condition of the disease and the probable result of any treatment which may be given him in the state hospital. Each copy of the certificate shall be signed by the superintendent and by each physician of the hospital who has taken part in the examinations, tests, and observations of the person.

(2) One (1) of the certificates shall be retained in the files of the state hospital and the other copy shall be sent to the clerk of the district court of the county in which the hearing was held. Upon receipt of the certificate by the clerk of the district court he shall file the certificate and call the certificate to the attention of the district judge who made the order for the person to be placed in the state hospital for observation, or to the attention of any district judge of the judicial district in which the county is situated, or to the attention of any district judge who is sitting or acting in place of the judge who made the order directing that the person be placed in the state hospital for observation. As soon as possible thereafter the district judge must make an order in duplicate that the person be committed to and confined in the state hospital. Both copies of the order must be delivered to the clerk of the court who must file and



record one (1) of the orders and send the other to the superintendent of the state hospital which is the authority of the superintendent to confine the person in the state hospital. All of the provisions of section 38-208 applicable thereto apply to all orders made under this section.

**History:** En. Sec. 5, Ch. 157, L. 1943; amd. Sec. 24, Ch. 120, L. 1974.

hospital" for "Montana state hospital" and "hospital" throughout the section; and made minor changes in phraseology and punctuation.

#### **Amendments**

The 1974 amendment substituted "state

### **38-406. Repealed.**

#### **Repeal**

Section 38-406 (Sec. 6, Ch. 157, L. 1943; Sec. 1, Ch. 33, L. 1953), relating to the procedure for voluntary application for

admission to state hospital for treatment of mental condition, was repealed by Sec. 3, Ch. 102, Laws 1969.

### **38-406.1. Repealed.**

#### **Repeal**

Section 38-406.1 (Sec. 1, Ch. 102, L. 1969), relating to definitions pertaining

to voluntary admission for diagnosis and treatment of mental illness, was repealed by Sec. 96, Ch. 120, Laws of 1974.

### **38-406.2. [Transferred.]**

#### **Compiler's Notes**

Section 25, Ch. 120, Laws of 1974 re-numbered this section as sec. 38-408.1.

**38-407. Trial by jury, when.** When an order is made under section 38-405 committing a person to the state hospital, and the person, or any relative, friend, or guardian of the person, is dissatisfied with the order, he may, within ten (10) days after the making of the order, demand the question of his sanity be tried by a jury, before the district court of the county from which he was committed. The demand must be made in writing, served upon the county attorney, and filed with the clerk of the district court of the county. Upon demand being made, served, and filed, a trial must be held in the manner provided by section 38-213, and all of the provisions of that section applicable thereto apply to the trial and proceedings in connection therewith.

**History:** En. Sec. 7, Ch. 157, L. 1943; amd. Sec. 26, Ch. 120, L. 1974.

#### **Amendments**

The 1974 amendment deleted "or of section 38-406" after "section 38-405" in

the first sentence; substituted "state hospital" for "Montana state hospital" in the first sentence; and made minor changes in phraseology and punctuation.

**38-408. Duty of clerk of district court.** When an order made by a district judge under section 38-405 has been filed by a clerk of the court, the clerk must immediately notify in writing the county board of public welfare of the county where the order was made.

**History:** En. Sec. 8, Ch. 157, L. 1943; amd. Sec. 27, Ch. 120, L. 1974.

#### **Amendments**

The 1974 amendment deleted "or section 38-406" after "section 38-405"; and made minor changes in phraseology.

**38-408.1. Voluntary admission for at least sixty days authorized — application — earlier release — proceedings for judicial commitment —**

right to release — costs of commitment proceedings — transportation costs. (1) Subject to the availability of suitable accommodations, the superintendent of the state hospital shall admit to the state hospital a person who is mentally ill or who has symptoms of mental illness for whom voluntary application is made in accordance with subsection (2) of this section. Under this section, mental illness means a psychiatric or other disease which substantially impairs mental health.

(2) An application for voluntary admission to the state hospital shall:

(a) Be on forms prescribed by the state hospital and furnished by the state hospital to the county attorney;

(b) Be signed before two witnesses by the prospective patient seeking admittance, or in the case of a minor, by his parent or guardian;

(c) Be certified by a licensed physician who has personally examined the prospective patient and believes he is mentally ill or has symptoms of mental illness or is in need of psychiatric evaluation and treatment; and

(d) Contain a statement by the prospective patient, or his parent or guardian that, unless earlier released on convalescent status or discharged, the prospective patient will remain in the state hospital for diagnosis and treatment for at least sixty (60) days.

(3) If in the opinion of the superintendent detention of the patient for the entire sixty (60) day period is unnecessary, the superintendent may release or discharge the patient.

(4) Proceedings for judicial commitment shall not be commenced with respect to a person admitted on voluntary application unless after the sixty (60) day period of compulsory detention the patient requests his release in writing or whose release is requested in writing by his parent, guardian, spouse, or next of kin. Upon receipt of the request, the patient shall be released within five (5) days after the request is received unless the superintendent files a petition with the district court of the third judicial district in the county of Deer Lodge certifying that in his opinion the release of the patient would be unsafe for the patient or others, or that the patient is in need of care and treatment in the state hospital and because of his illness lacks sufficient insight or capacity to make responsible decisions with respect to his hospitalization.

(5) The superintendent of the state hospital shall inform patients of their right to release as provided in this section.

(6) The costs of commitment proceedings under this section shall be paid by the county of the patient's residence. When the proceedings are completed, the clerk of the district court for the county of Deer Lodge shall send all papers relating to the proceedings to the clerk of the district court of the county of the patient's residence.

(7) The costs of transportation to the state hospital under this section shall be provided by the patient, his parents, guardian, or the welfare department of the county of the patient's residence.

History: En. Sec. 2, Ch. 102, L. 1969; redes. 38-408.1 by Sec. 25, Ch. 120, L. Sec. 38-406.2, R. C. M. 1947; amd. and 1974.

**Amendments**

The 1974 amendment renumbered this section; substituted "state hospital" for "hospital" throughout the section; in-

serted the final sentence of subsection (1) defining "mental illness"; and made minor changes in phraseology.

**38-409. Repealed.****Repeal**

This section (Sec. 9, Ch. 157, L. 1943), relating to investigations of the financial

worth of persons committed or admitted to the Montana state hospital, was repealed by Sec. 10, Ch. 213, Laws 1963.

**38-410. Repealed.****Repeal**

Section 38-410 (Sec. 1, Ch. 129, L. 1955), relating to the procedure for determining

financial ability of applicant for admission to state hospital, was repealed by Sec. 3, Ch. 102, Laws 1969.

**38-411, 38-412. Repealed.****Repeal**

These sections (Secs. 2, 3, Ch. 129, L. 1955), relating to the charges for care and maintenance of persons voluntarily

admitted to the Montana state hospital, were repealed by Sec. 10, Ch. 213, Laws 1963.

**CHAPTER 5—CONVALESCENT LEAVE OF PATIENTS**

- Section 38-502. Convalescent leave of patients from Warm Springs state hospital.  
 38-503. Permitting patient to leave.  
 38-504. Termination of convalescent leave.  
 38-505. Report by person under whom patient is placed on convalescent leave.  
 38-506. Support of patient placed on convalescent leave, discharged by lapse of time.  
 38-507. Clothing for patient on convalescent leave or discharged patient.

**38-502. Convalescent leave of patients from Warm Springs state hospital.** The superintendent of Warm Springs state hospital may grant a convalescent leave to a patient under general conditions prescribed by the department of institutions.

History: En. Sec. 2, Ch. 145, L. 1941; amd. Sec. 1, Ch. 152, L. 1957; amd. Sec. 27, Ch. 266, L. 1963; amd. Sec. 28, Ch. 120, L. 1974.

end of the section for "state board of commissioners for the insane."

The 1974 amendment substituted "Warm Springs state hospital" for "Montana state hospital"; and substituted "department of institutions" for "state department of public institutions."

**Amendments**

The 1963 amendment substituted "state department of public institutions" at the

**38-503. Permitting patient to leave.** A patient of the state hospital may be permitted by the superintendent to leave the institution on convalescent leave and remain in the custody of a parent, relative, legal guardian, or other person.

History: En. Sec. 3, Ch. 145, L. 1941; amd. Sec. 2, Ch. 152, L. 1957; amd. Sec. 29, Ch. 120, L. 1974.

**Amendments**

The 1974 amendment substituted "state hospital" for "Montana state hospital"; and made minor changes in punctuation.

**38-504. Termination of convalescent leave.** All patients, while on convalescent leave, remain in the legal custody, and under the control of the department. At any time during the convalescent leave, upon evidence



satisfactory to the superintendent or to the department that convalescent leave should terminate, the patient must be returned to the state hospital. The written order of the department, certified by the superintendent of the hospital, is sufficient warrant to an officer to retake and return the patient to actual custody in the state hospital.

**History:** En. Sec. 4, Ch. 145, L. 1941; amd. Sec. 3, Ch. 152, L. 1957; amd. Sec. 28, Ch. 266, L. 1963; amd. Sec. 30, Ch. 120, L. 1974.

#### Amendments

The 1963 amendment substituted "state department of public institutions" in three

places for "state board of commissioners for the insane."

The 1974 amendment substituted "department" for "state department of public institutions" and "state hospital" for "Montana state hospital" throughout the section; and made minor changes in phraseology and punctuation.

**38-505.** Report by person under whom patient is placed on convalescent leave. The person with whom the patient is placed on convalescent leave shall report the physical, moral, and mental condition of the patient to the superintendent either in person or by writing as often and as fully as the superintendent may require, and subject to the recommendations and regulations which the department may determine. In case of failure to report on request, the inmate may be returned to the state hospital. The patient shall be accessible to representatives of the state hospital.

**History:** En. Sec. 5, Ch. 145, L. 1941; amd. Sec. 4, Ch. 152, L. 1957; amd. Sec. 29, Ch. 266, L. 1963; amd. Sec. 31, Ch. 120, L. 1974.

#### Amendments

The 1963 amendment substituted "state department of public institutions" for

"state board of commissioners for the insane" near the end of the first sentence.

The 1974 amendment substituted "department" for "state department of public institutions" and "state hospital" for "Montana state hospital"; and made minor changes in phraseology and punctuation.

**38-506.** Support of patient placed on convalescent leave, discharged by lapse of time. (1) When the state hospital places a patient on convalescent leave, it is not liable for his support while on convalescent leave. Liability devolves upon the legal guardian, parent, or person under whose care the patient is placed on convalescent leave, or upon any other person legally liable for his support. The public welfare officials of the county where the patient resides or is found, are responsible for providing relief and care for the patient on convalescent leave who is unable to maintain himself, or who is unable to secure support from the person under whose care he was placed on convalescent leave, like any other person in need of relief and care, under the public welfare laws. The person under whose care the patient is placed on convalescent leave or any other person legally liable for his support, shall, if the convalescent leave is revoked, be liable for any expense incurred by the state or county in procuring the return of the patient to the hospital.

(2) The superintendent of the state hospital shall place on convalescent leave any patient under his control when he believes it is in the best interests of the patient and society to do so. If a patient placed on convalescent leave is not returned to the institution within a period of two (2) years, he is considered discharged therefrom and entry shall be made accordingly in the records of the institution. If a patient who has escaped from the institution is not returned thereto within two (2) years, he is

considered discharged therefrom and an entry shall be made accordingly in the records of the institution. When a patient is discharged whether by convalescent leave continuing for a period of two (2) years or by having escaped and not having been returned within two (2) years, the superintendent of the state hospital shall immediately notify in writing the judge of the court by which the patient was committed. A person so discharged may not be recommitted to the state hospital except by court order and upon proceedings as required by law for commitment in the first instance. This section does not restore the civil rights of persons so discharged or restore sanity, or relieve the superintendent of the state hospital from the obligation of supervising patients on convalescent leave to the extent of available facilities and finances.

**History:** En. Sec. 6, Ch. 145, L. 1941; amd. Sec. 1, Ch. 149, L. 1953; amd. Sec. 5, Ch. 152, L. 1957; amd. Sec. 32, Ch. 120, L. 1974.

#### **Amendments**

The 1974 amendment substituted "state hospital" for "Montana state hospital" throughout the section; and made minor changes in phraseology, punctuation and style.

**38-507. Clothing for patient on convalescent leave or discharged patient.** A patient or inmate may not be discharged or placed on convalescent leave from the state hospital without suitable clothing adapted to the season in which he is discharged.

**History:** En. Sec. 7, Ch. 145, L. 1941; amd. Sec. 6, Ch. 152, L. 1957; amd. Sec. 33, Ch. 120, L. 1974.

#### **Amendments**

The 1974 amendment substituted "state hospital" for "Montana state hospital"; and made minor changes in phraseology.

## **CHAPTER 6—EUGENICAL STERILIZATION LAW**

(Repealed—Section 1, Chapter 310, Laws of 1969)

**38-601 to 38-608. (1444.1 to 1444.8) Repealed.**

#### **Repeal**

Sections 38-601 to 38-608 (Secs. 1 to 8, Ch. 164, L. 1923), known as the Eugenic

Sterilization Law, were repealed by Sec. 1, Ch. 310, Laws 1969, effective March 11, 1969.

## **CHAPTER 7—ALCOHOLISM SERVICES CENTER**

(Repealed—Section 15, Chapter 112, Laws of 1963; Section 101, Chapter 199, Laws of 1965)

**38-701 to 38-711. (1445 to 1455) Repealed.**

#### **Repeal**

These sections (Secs. 1, 2, 4 to 12, Ch. 139, L. 1911; Secs. 1, 2, Ch. 130, L. 1955) relating to the state hospital for inebriates, were repealed by Sec. 15, Ch. 112, Laws

1963. Section 38-702 was also repealed by Sec. 82, Ch. 266, Laws 1963, and sections 38-707 and 38-708 were also repealed by Sec. 10, Ch. 213, Laws 1963.

**38-712 to 38-724. Repealed.**

#### **Repeal**

These sections (Secs. 1 to 13, Ch. 112, L. 1963), relating to the alcoholism serv-

ices center, were repealed by Sec. 101, Ch. 199, Laws 1965.

## CHAPTER 8—MONTANA STATE TRAINING SCHOOL AND HOSPITAL

(Repealed—Section 10, Chapter 213, Laws of 1963; Section 82, Chapter 266, Laws of 1963 and Section 101, Chapter 199, Laws of 1965)

**38-801. Repealed.****Repeal**

This section (Sec. 1, Ch. 183, L. 1943; Sec. 1, Ch. 37, L. 1959), relating to the

establishment of the Montana state training school and hospital, was repealed by Sec. 82, Ch. 266, Laws 1963.

**38-802. Repealed.****Repeal**

This section (Sec. 2, Ch. 183, L. 1943; Sec. 54, Ch. 266, L. 1963), describing the

purposes of the state training school and hospital, was repealed by Sec. 101, Ch. 199, Laws 1965.

**38-803. Repealed.****Repeal**

This section (Sec. 3, Ch. 183, L. 1943), relating to the powers and duties of the

state board of education, was repealed by Sec. 82, Ch. 266, Laws 1963.

**38-804 to 38-807. Repealed.****Repeal**

These sections (Secs. 4 to 7, Ch. 183, L. 1943; Secs. 55, 56, Ch. 266, L. 1963), relating to the powers of the superin-

tendent and to admissions to the state training school and hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

**38-808, 38-809. Repealed.****Repeal**

These sections (Secs. 8, 9, Ch. 183, L. 1943; Sec. 1, Ch. 186, L. 1953; Sec. 1,

Ch. 73, L. 1959), relating to payment of expenses by inmates or their parents, were repealed by Sec. 10, Ch. 213, Laws 1963.

**38-809.1. Repealed.****Repeal**

This section (Sec. 2, Ch. 73, L. 1959), relating to county investigation of the financial condition of persons responsible

for the expense of maintenance of inmates of the school, was repealed by Sec. 10, Ch. 213, Laws 1963.

**38-810, 38-811. Repealed.****Repeal**

These sections (Secs. 10, 11, Ch. 183, L. 1943), relating to the procedure for

commitment to the state training school and hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

**38-812. Repealed.****Repeal**

This section (Sec. 12, Ch. 183, L. 1943; Sec. 2, Ch. 186, L. 1953; Sec. 3, Ch. 73, L.

1959), relating to orders for support of inmates of the school, was repealed by Sec. 10, Ch. 213, Laws 1963.

**38-813 to 38-816. Repealed.****Repeal**

These sections (Secs. 13 to 16, Ch. 183, L. 1943; Sec. 9, Ch. 213, L. 1963), relating to admission to and discharge and trans-

fer from the state training school and hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

**38-817, 38-818. Repealed.****Repeal**

These sections (Secs. 17, 18, Ch. 183, L. 1943), relating to the executive board of the training school, and containing a

repeal of early laws pertaining to the school, were repealed by Sec. 82, Ch. 266, Laws 1963.



**38-819. Repealed.****Repeal**

This section (Sec. 1, Ch. 11, L. 1943), relating to the transfer of inmates from

the state training school to the state hospital, was repealed by Sec. 101, Ch. 199, Laws 1965.

**CHAPTER 9—LEASES OF FARM LAND FOR STATE HOSPITAL AND STATE PENITENTIARY AUTHORIZED**

(Repealed—Section 82, Chapter 266, Laws of 1963)

**38-901, 38-902. Repealed.****Repeal**

These sections (Secs. 1, 2, Ch. 209, L. 1943), relating to leases of farm land for

the state hospital and state prison, were repealed by Sec. 82, Ch. 266, Laws 1963.

**CHAPTER 10—STATE DEPARTMENT OF MENTAL HYGIENE**

(Repealed—Section 101, Chapter 199, Laws of 1965)

**38-1001 to 38-1003. Repealed.****Repeal**

These sections (Secs. 1 to 3, Ch. 103, L. 1947; Sec. 30, Ch. 266, L. 1963), establish-

ing a state department of mental hygiene, were repealed by Sec. 101, Ch. 199, Laws 1965.

**CHAPTER 11—HOME FOR SENILE MEN AND WOMEN****38-1101. Repealed.****Repeal**

This section (Sec. 6, Ch. 206, L. 1949; Sec. 57, Ch. 266, L. 1963), defining terms

for purposes of the chapter, was repealed by Sec. 101, Ch. 199, Laws 1965.

**38-1106. Repealed.****Repeal**

This section (Sec. 11, Ch. 206, L. 1949; Sec. 2, Ch. 230, L. 1959), relating to the

maintenance of inmates of the home for senile men and women, was repealed by Sec. 101, Ch. 199, Laws 1965.

**38-1108 to 38-1112. Repealed.****Repeal**

These sections (Secs. 13 to 17, Ch. 206, L. 1949; Sec. 3, Ch. 230, L. 1959; Sec. 58, Ch. 266, L. 1963), relating to commitment,

transfer and release of inmates of the home for senile men and women, were repealed by Sec. 101, Ch. 199, Laws 1965.



## TITLE 39—INSTRUMENTS, ACKNOWLEDGMENT AND PROOF

Chapter 1. Acknowledgment and proof of instruments, 39-107, 39-135 to 39-139.

### CHAPTER 1—ACKNOWLEDGMENT AND PROOF OF INSTRUMENTS

- Section 39-107. Officer taking acknowledgment must know person—corporations.  
39-135. Validation of unacknowledged deeds executed before 1965.  
39-136. Validation of unacknowledged deeds executed before 1967.  
39-137. Validation of unacknowledged deeds executed before 1969.  
39-138. Validation of unacknowledged deeds executed before 1971.  
39-139. Validation of unacknowledged deeds executed before 1973.

**39-107. (6910) Officer taking acknowledgment must know person — corporations.** The acknowledgment of an instrument must not be taken unless the officer taking it knows or has satisfactory evidence that the person making such acknowledgment is the individual who is described in and who executed the instrument; or, if executed by a corporation, that the person making such acknowledgment is the president, or vice-president, or secretary, or assistant secretary of such corporation, or other person duly authorized by resolution of such corporation, who executed it on its behalf.

History: En. Sec. 1605, Civ. C. 1895; re-en. Sec. 4659, Rev. C. 1907; amd. Sec. 1, Ch. 2, L. 1913; re-en. Sec. 6910, R. C. M. 1921; amd. Sec. 1, Ch. 171, L. 1937; amd. Sec. 1, Ch. 12, L. 1974. Cal. Civ. C. Sec. 1185.

oath or affirmation of a credible witness" after "satisfactory evidence" near the beginning of the section.

#### Repealing Clause

Section 2 of Ch. 12, Laws 1974 read "Sections 39-118 and 39-119, R. C. M. 1947, are repealed."

#### Amendments

The 1974 amendment deleted "on the

#### 39-118, 39-119. Repealed.

##### Repeal

These sections (Secs. 1616, 1617, Civ. C. 1895), relating to proof by a subscribing

witness, were repealed by Sec. 2, Ch. 12, Laws 1974.

**39-135. Validation of unacknowledged deeds executed before 1965.** All deeds to real property heretofore executed in this state, or any state or territory of the United States, provided no action is now pending to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

History: En. Sec. 1, Ch. 123, L. 1965.

#### Title of Act

An act validating deeds and convey-

ances heretofore made which are defective in execution or acknowledgment, providing that such instruments shall be con-



clusive evidence of title against the grantors, containing a repealing clause.

#### Repealing Clause

Section 2 of Ch. 123, Laws 1965 repealed all acts and parts of acts in conflict therewith.

**39-136. Validation of unacknowledged deeds executed before 1967.** All deeds to real property executed prior to January 1, 1967 in this state, or any state or territory of the United States, provided no action is now pending to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

**History:** En. Sec. 1, Ch. 183, L. 1967.

#### Title of Act

An act validating deeds and conveyances made prior to January 1, 1967 which

are defective in execution or acknowledgment, providing that such instruments shall be conclusive evidence of title against the grantors.

**39-137. Validation of unacknowledged deeds executed before 1969.** All deeds to real property executed prior to January 1, 1969, in this state, or any state or territory of the United States, provided no action is now pending to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

**History:** En. Sec. 1, Ch. 77, L. 1969.

#### Title of Act

An act validating deeds and conveyances made prior to January 1, 1969,

which are defective in execution or acknowledgment, providing that such instruments shall be conclusive evidence of title against the grantors.

**39-138. Validation of unacknowledged deeds executed before 1971.** All deeds to real property executed prior to January 1, 1971, in this state, or any state or territory of the United States, provided no action is now pending to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

**History:** En. Sec. 1, Ch. 95, L. 1971.

#### Title of Act

An act validating deeds and conveyances made prior to January 1, 1971,

which are defective in execution or acknowledgment, providing that such instruments shall be conclusive evidence of title against the grantors.

**39-139. Validation of unacknowledged deeds executed before 1973.**

All deeds to real property executed prior to January 1, 1973, in this state, or any state or territory of the United States, provided no action is now pending to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

**History:** En. Sec. 1, Ch. 82, L. 1973.

are defective in execution or acknowledgment, providing that such instruments shall be conclusive evidence of title against the grantors.

**Title of Act**

An act validating deeds and conveyances made prior to January 1, 1973, which





## TITLE 40—INSURANCE AND INSURANCE COMPANIES

- Chapter 27. The commissioner of insurance, 40-2709, 40-2716, 40-2717, 40-2726.  
28. Authorization of insurers and general requirements, 40-2820 to 40-2822.  
30. Assets and liabilities, 40-3011.  
33. Agents, solicitors and adjusters, 40-3308 to 40-3311, 40-3313, 40-3314, 40-3321, 40-3327, 40-3328, 40-3332 to 40-3338.  
35. Trade practices and frauds, 40-3506, 40-3512.  
36. Rates and rating organizations, 40-3634 to 40-3669.  
37. The insurance contract, 40-3729, 40-3738 to 40-3740.  
38. Life insurance and annuities, 40-3802, 40-3831.  
39. Group life insurance, 40-3905.1, 40-3906.  
40. Disability insurance policies, 40-4002, 40-4002.1, 40-4008, 40-4035 to 40-4038.  
41. Group and blanket disability insurance, 40-4101, 40-4102, 40-4108, 40-4109.  
42. Credit life and disability insurance, 40-4203, 40-4206, 40-4211.  
43. Property insurance contracts, 40-4303.  
44. Casualty insurance contracts, 40-4402 to 40-4416.  
47. Organization and corporate procedures of stock and mutual insurers, 40-4705, 40-4745, 40-4751 to 40-4758.  
48. Farm mutual insurers, 40-4804, 40-4807.  
49. Benevolent associations, 40-4917, 40-4918.  
53. Fraternal benefit societies, 40-5321, 40-5324.  
54. Extended health insurance for older persons, 40-5401 to 40-5408.  
55. Insurance holding companies, 40-5501 to 40-5522.  
56. Workmen's compensation insurance premium rates, 40-5601 to 40-5618.  
57. Insurance guaranty association, 40-5701 to 40-5718.  
58. Life and health insurance guaranty association act, 40-5801 to 40-5819.

## CHAPTER 17—SURETY COMPANIES

### 40-1727. (6236) Repealed.

#### Repeal

This section (Sec. 3, Ch. 6, L. 1911; Sec. 1, Ch. 145, L. 1923; Sec. 1, Ch. 45, L. 1935; Sec. 19, Ch. 177, L. 1965), relating to the official bonds of county, city

and township officers, was repealed by Sec. 10, Ch. 68, Laws 1967. For new provisions relating to bonds of county officers and employees, see sec. 6-203 et seq.

## CHAPTER 26—SCOPE OF CODE

### 40-2611. Exempted organizations, activities.

#### Compiler's Notes

Section 15-1401, referred to in this sec-

tion in the parent volume, was repealed by Sec. 98, Ch. 198, Laws 1967.

### 40-2617. General penalty.

#### Applicability

Separate penalty section here provided is applicable to violation of section 40-4011 requiring prompt payment of claims.

State ex rel. Larson v. District Court, Eighth Judicial District, 149 M 131, 423 P 2d 598.

## CHAPTER 27—THE COMMISSIONER OF INSURANCE

- Section 40-2709. General powers, duties.  
40-2716. Examination reports.  
40-2717. Examination expense.  
40-2726. Fees and licenses.

**40-2709. General powers, duties.** (1) to (3). \* \* \* [Same as parent volume.]

(4) The commissioner may, after having conducted a hearing, pursuant to section 40-2720, impose a fine not to exceed the sum of five thousand dollars (\$5,000) upon a person found to have violated any provision of this code or regulation duly promulgated by the commissioner, except that the fine imposed upon agents or adjusters shall not exceed five hundred dollars (\$500). Said fine shall be in addition to all other penalties imposed by the laws of this state and shall be collected by the commissioner in the name of the state of Montana. Imposition of any fine hereunder shall be an order from which an appeal may be taken, pursuant to the provisions of section 40-2725.

(5) The commissioner shall have such additional powers and duties as may be provided by other laws of this state.

**History:** En. Sec. 28, Ch. 286, L. 1959;  
amd. Sec. 1, Ch. 16, L. 1969.

**Amendments**

The 1969 amendment inserted subsection (4) and redesignated former subsection (4) as subsection (5).

**40-2712. Repealed.**

**Repeal**

Section 40-2712 (Sec. 31, Ch. 286, L. 1959), relating to the commissioner's an-

nual report, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see sections 82-4001 and 82-4002.

**40-2716. Examination reports.** (1) and (2). \* \* \* [Same as parent volume.]

(3) Any director, officer, agent or employee of any company who destroys any books, records or documents required to be kept by law for the purpose of hindering any examination in violation of the requirements of this section shall be punished by a fine of not more than one thousand dollars (\$1,000), and, after a hearing thereon for that purpose, the commissioner may revoke the certificate of authority of such company.

(4) The commissioner shall furnish a copy of the proposed report to the person examined not less than twenty (20) days prior to filing the same in his office. If such person so requests in writing within such twenty-day period, the commissioner shall grant a hearing with respect to the report, and shall not so file the report until after the hearing and after such modifications, if any, have been made therein as the commissioner deems proper.

(5) The report when so verified and filed shall be presumptive evidence, in any action or proceeding brought by the commissioner against the person examined, or against its officers or agents, of the facts stated therein. The commissioner and his examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, whether or not a written report of the examination has at that time been either made, served, or filed in the commissioner's office.

(6) The commissioner may withhold from public inspection any examination or investigation report for so long as he deems such withholding to be necessary for the protection of the person examined against unwarranted injury or to be in the public interest.

(7) If he deems such to be in the public interest the commissioner may publish any such examination report or a summary thereof in one or more newspapers in the state.

**History:** En. Sec. 35, Ch. 286, L. 1959;  
amd. Sec. 1, Ch. 28, L. 1967.

**Amendments**

The 1967 amendment inserted a new subsection (3) and redesignated former subsections (3) through (6) as present subsections (4) through (7).

40-2717. **Examination expense.** (1). \* \* \* [Same as parent volume.]

(2) The commissioner shall pay to the state treasurer to the credit of the general fund all moneys received pursuant to subsection (1) above.

(3). \* \* \* [Same as parent volume.]

**History:** En. Sec. 36, Ch. 286, L. 1959;  
amd. Sec. 72, Ch. 147, L. 1963.

**Amendment**

The 1963 amendment rewrote subsection (2). For previous text, see parent volume.

**40-2725. Appeals from the commissioner.**

**Compiler's Notes**

Section 40-3633, referred to in subsection (8), was repealed by Sec. 37, Ch.

362, Laws of 1969. For a similar provision in current law, see section 40-3664.

**40-2726. Fees and licenses.** (1) The commissioner shall collect in advance, and the persons so served shall so pay to the commissioner, the following fees and licenses:

(a) **Certificates of authority.**

(i). \* \* \* [Same as parent volume.]

(ii) Annual continuation of certificate of authority-----300.00

(iii). \* \* \* [Same as parent volume.]

(b) to (m). \* \* \* [Same as parent volume.]

(n) **Policy forms:**

(i) Filing each policy form----- 25.00

(ii) Filing each application, rider, endorsement, amendment, insert page, schedule or rates and clarification of risks----- 10.00

(iii) Maximum charge if policy and all forms submitted at one time, or resubmitted for approval within 180 days----- 50.00

(2) and (3). \* \* \* [Same as parent volume.]

**History:** En. Sec. 45, Ch. 286, L. 1959;  
amd. Sec. 1, Ch. 32, L. 1969; amd. Sec. 1,  
Ch. 334, L. 1973.

**Amendments**

The 1969 amendment raised the fee for an annual continuation of certificate of authority provided in item (1)(a)(ii) from \$25 to \$300.

**Compiler's Notes**

Section 25-101 referred to in subsection (3), was repealed by Sec. 673, Ch. 286, Laws of 1959.

The 1973 amendment inserted subdivision (1)(n).



## CHAPTER 28—AUTHORIZATION OF INSURERS AND GENERAL REQUIREMENTS

- Section 40-2820. Annual statement.  
 40-2821. Tax.  
 40-2822. Resident agent required—countersignature—records—exceptions.

### 40-2801. Certificate of authority required, etc.

#### Access to Courts

This section prohibits the transaction of insurance business without a certificate of authority from the commissioner but does not deny unauthorized companies

access to the courts; a certificate of authority is not required to maintain and protect policies lawfully written in Montana. *Empire Life Ins. Co. of America v. Sorenson*, 347 F Supp 987.

### 40-2818. Commissioner attorney for service of process.

#### Venue of Action

Statute cannot be construed, for purpose of venue, under statute providing that actions be tried in county in which defendants reside, as giving a foreign insurance company residency in county

of insurance commissioner, serving as agent of insurance company for service of process. *Truck Ins. Exchange v. National Farmers Union Property & Cas. Co.*, 149 M 387, 427 P 2d 50.

**40-2820. Annual statement.** (1) to (3). \* \* \* [Same as parent volume.]

(4) Any director, officer or agent or employee of any company who subscribes to, makes, or concurs in making, or publishing, any annual statement, or any other statement required by law, knowing the same to contain any material statement which is false shall be punished by a fine of not more than one thousand dollars (\$1,000).

(5) At time of filing, the insurer shall pay to the commissioner the fee for filing its statement as prescribed in section 40-2726.

**History:** En. Sec. 65, Ch. 286, L. 1959;  
 amd. Sec. 1, Ch. 27, L. 1967.

#### Amendments

The 1967 amendment added a new subsection (4) and redesignated former subsection (4) as present subsection (5).

**40-2821. Tax.** (1). \* \* \* [Same as parent volume.]

(2) Coincident with the filing of the tax report referred to in subsection (1) above, each such insurer shall pay to the commissioner a tax upon such net premiums, the tax to be computed at the rate of two and three-quarters per cent (2-3/4%) of such premiums.

Provided, that where any insurer has not less than fifty per cent (50%) of its paid-in capital stock invested in Montana securities, the insurer shall be allowed to deduct whatever tax it may have already paid to the state of Montana and its political subdivisions, during the same calendar year as to which premium tax is being paid, from the amount otherwise due under this section. For the purpose of this provision "paid-in capital stock" as to a mutual or reciprocal insurer shall be deemed to be an amount equal to ten per cent (10%) of the insurer's assets; and "Montana securities" shall be deemed to include only general obligations of the state of Montana or of its political subdivisions, mortgage loans secured by a first lien upon real estate located in Montana, and real estate located in Montana owned by the insurer, all if otherwise lawful investments of the insurer under this code.

(3) (a) On or before March 1 of each year each insurer shall file with the commissioner, on forms as prescribed and furnished or accepted by him, a report of its gross underwriting profit on wet marine and transportation insurance, as defined in section 40-2907, written in this state during the calendar year next preceding, and shall at the same time pay to the commissioner a tax of three-quarters of one per cent ( $\frac{3}{4}$  of 1%) of such gross underwriting profit.

(b) \* \* \* [Same as parent volume.]

(4) to (7) \* \* \* [Same as parent volume.]

(8) The provisions of this section shall apply to taxable years beginning after December 31, 1968.

**History:** En. Sec. 66, Ch. 286, L. 1959; amd. Sec. 1, Ch. 160, L. 1961; amd. Sec. 1, Ch. 78, L. 1963; amd. Sec. 1, Ch. 26, L. 1965; amd. Sec. 1, Ch. 71, L. 1967; amd. Sec. 1, Ch. 358, L. 1969; amd. Sec. 1, Ch. 237, L. 1971.

#### Amendments

The 1963 amendment substituted "1963 and 1964" for "1961 and 1962" in the proviso to the first paragraph of subsection (2).

The 1965 amendment substituted "1965 and 1966" for "1963 and 1964" in the proviso to the first paragraph of subsection (2).

The 1967 amendment substituted "1967 and 1968" for "1965 and 1966" in the proviso to the first paragraph of subsection (2).

The 1969 amendment, in subsection (2), substituted "1969 and 1970" for "1967 and 1968" and "two and three-quarters per cent ( $2\frac{3}{4}\%$ )" for "two and one-quarter per cent ( $2\frac{1}{4}\%$ )."

The 1971 amendment increased the tax rate set forth in the first paragraph of subsection (2) from 2% to  $2\frac{3}{4}\%$ ; deleted a former proviso to the first paragraph of subsection (2) reading, "provided that for each of the calendar years 1969 and 1970 the tax shall be computed at the rate of two and three-quarters per cent ( $2\frac{3}{4}\%$ ) of such premiums"; substituted "December 31, 1968" for "December 31, 1960" in subsection (8); and made a minor change in style.

#### Effective Date

Section 2 of Ch. 237, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 3, 1971.

#### Cross-Reference

Payments to cities and towns from proceeds of tax on motor vehicle insurance premiums, secs. 11-1834 to 11-1837.

**40-2822. Resident agent required—countersignature—records—exceptions.** (1) and (2). \* \* \* [Same as parent volume.]

(3) This section shall not apply to:

(a) Reinsurance.

(b) Life insurance, disability insurance or annuity contracts.

(c) Insurance of the rolling stock, vessels or aircraft of any common carrier in interstate or foreign commerce, or of any vehicle principally garaged and used in another state, or covering any liability or other risks incident to the ownership, maintenance or operation thereof.

(d) Insurance of property in course of transportation interstate or in foreign trade, or any liability or risk incident thereto.

(e) Insurance of wet marine and transportation risks.

(f) With respect to countersignature to policies issued through agents compensated only by salary or issued by insurers not using agents in the general solicitation of business.

(g) Bid bonds, as required under section 6-501, R.C.M. 1947.

(4). \* \* \* [Same as parent volume.]

**History:** En. Sec. 67, Ch. 286, L. 1959; amd. Sec. 1, Ch. 72, L. 1963.

#### Amendment

The 1963 amendment added clause (g) to subsection (3).

## CHAPTER 30—ASSETS AND LIABILITIES

Section 40-3011. Standard valuation law—life insurance.

**40-3011. Standard valuation law—life insurance.** (1). \* \* \* [Same as parent volume.]

(2) This subsection shall apply to only those policies and contracts issued prior to the operative date of section 40-3831 (the standard non-forfeiture law).

Except as otherwise provided in (3) (a) (vii) (A) of this section for group annuity and pure endowment contracts, the minimum standard of valuation on all policies of domestic life insurers issued prior to January 1, 1922, shall be the American experience table of mortality and interest at three and one-half per cent ( $3\frac{1}{2}\%$ ) per annum, with preliminary term insurance for the first policy year, and for policies of such insurers issued subsequent to December 31, 1921, shall be the American experience table of mortality with interest at three and one-half per cent ( $3\frac{1}{2}\%$ ) per annum, with preliminary term insurance for the first policy year, except as follows: If the premium charged for term insurance under a limited payment life preliminary term policy providing for the payment of all premiums thereon in less than twenty (20) years from the date of the policy, or under an endowment preliminary term policy, exceeds that charged for life insurance under twenty (20) payment life preliminary term policies of the same insurer, the reserve thereon at the end of any year, including the first, shall not be less than the reserve on a twenty (20) payment life preliminary term policy issued in the same year and at the same age, together with an amount which shall be equivalent to the accumulation of a net level premium reserve sufficient to provide for a pure endowment at the end of the premium payment period equal to the difference between the value at the end of such period of such a twenty (20) payment life preliminary term policy and the full net level premium reserve at such time of such a limited payment life or endowment policy.

Reserves for all such policies and contracts may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this subsection.

(3) This subsection shall apply to only those policies and contracts issued on or after the operative date of section 40-3831 (the standard non-forfeiture law), except as otherwise provided in (3) (a) (vii) (A) of this section for group annuity and pure endowment contracts issued prior to such operative date.

(a) Except as otherwise provided in (3) (a) (vii) (A) of this section, the minimum standard for the valuation of all such policies and contracts shall be the commissioner's reserve valuation method defined in subdivision (b), three and one-half per cent ( $3\frac{1}{2}\%$ ) interest, or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after the effective date of this amendatory act of 1973 and prior to January 1, 1986, four per cent (4%) interest, and the following tables:



(i). \* \* \* [Same as parent volume.]

(ii) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the 1941 standard industrial mortality table for such policies issued prior to the operative date of subsection (8-b) of section 40-3831 (the standard nonforfeiture law) as amended, and the commissioner's 1961 standard industrial mortality table for such policies issued on or after such operative date.

(iii) to (vi). \* \* \* [Same as parent volume.]

(vii) For group life insurance, life insurance issued on the substandard basis and other special benefits—such tables as may be approved by the commissioner.

(A) The minimum standard for the valuation of all individual annuity and pure endowment contracts issued on the effective date of this subsection, as defined herein, and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, shall be the commissioner's reserve valuation method defined in (3) (b) of this section and the following tables and interest rates:

(I) For individual annuity and pure endowment contracts issued prior to January 1, 1986, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table, or any modification of this table approved by the commissioner, and six per cent (6%) interest for single premium immediate annuity contracts, and four per cent (4%) interest for all other individual annuity and pure endowment contracts.

(II) For individual annuity and pure endowment contracts issued on or after January 1, 1986, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table, or any modification of the table approved by the commissioner, and three and one-half per cent (3½%) interest.

(III) For all annuities and pure endowments purchased prior to January 1, 1986, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 group annuity mortality table, or any modification of the table approved by the commissioner, and six per cent (6%) interest.

(IV) For all annuities and pure endowments purchased on or after January 1, 1986, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 group annuity mortality table, or any modification of this table approved by the commissioner, and three and one-half per cent (3½%) interest.

After the effective date of this amendatory act of 1973, any insurer may file with the commissioner a written notice of its election to comply with the provisions of the subsection (A) after a specified date before January 1, 1979, which shall be the operative date of the subparagraph for such insurer provided an insurer may elect a different operative date for individual annuity and pure endowment contracts from that elected for

group annuity and pure endowment contracts. If an insurer makes no such election, the operative date of this subparagraph for such insurer shall be January 1, 1979.

(b) and (c). \* \* \* [Same as parent volume.]

(d) Reserves for any category of policies, contracts or benefits as established by the commissioner, may be calculated at the option of the insurer according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein. Provided, however, that reserves for participating life insurance policies may, with the consent of the commissioner, be calculated according to a rate of interest [lower than the rate of interest] used in calculating the nonforfeiture benefits in such policies, with the further proviso that if such lower rate differs from the rate used in the calculation of the nonforfeiture benefits by more than one-half per cent ( $\frac{1}{2}\%$ ) the insurer issuing such policies shall file with the commissioner a plan providing for such equitable increases, if any, in the cash surrender values and nonforfeiture benefits in such policies as the commissioner shall approve.

(e). \* \* \* [Same as parent volume.]

**History:** En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 341, L. 1973.

#### Compilers' Notes

The effective date of Ch. 341, Laws 1973, was March 17, 1973.

#### Amendments

The 1965 amendment added at the end of paragraph (3) (a) (ii) the words "for such policies issued prior to the operative date of subsection (8-b) of section 40-3831 (the standard nonforfeiture law) as amended, and the commissioners 1961 standard industrial mortality table for such policies issued on or after such operative date"; and, apparently through clerical error, deleted from paragraph (3) (d) the words enclosed above in brackets.

The 1973 amendment inserted "except as otherwise provided in (3)(a)(vii)(A) of this section for group annuity and pure

endowment contracts" at the beginning of the second paragraph of subsection (2) and at the end of the first paragraph in subsection (3); inserted "Except as otherwise provided in (3)(a)(vii)(A) of this section" to the beginning of subdivision (3)(a); inserted "or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after the effective date of this amendatory act of 1973 and prior to January 1, 1986, four per cent (4%) interest" near the end of the preliminary paragraph of subdivision (3)(a); inserted subdivision (3)(a)(vii)(A); and inserted the bracketed words in the proviso to subdivision (3)(d).

#### Effective Date

Section 2 of Ch. 41, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 22, 1965.

## CHAPTER 33—AGENTS, SOLICITORS AND ADJUSTERS

- Section 40-3308. General qualifications, resident agents and solicitors—other than life insurance agents.
- 40-3309. General qualification for license as life or disability insurance agent.
- 40-3310. Licensing of firms and corporations.
- 40-3311. Licensing of resident agents' association.
- 40-3313. Examination.
- 40-3314. Conduct of examinations.
- 40-3321. Special requirements as to solicitors.
- 40-3327. Adjuster's license—qualifications—catastrophe adjustments.
- 40-3328. Continuance, expiration of licenses.

- 40-3332. Acting as insurance agent, solicitor, or adjuster without license—penalty.
- 40-3333. Nonresident agent may be licensed—reciprocity.
- 40-3334. Nonresident agent's right to solicit business contingent upon reciprocal arrangement.
- 40-3335. Nonresident agent must be licensed in state of residence—limitation as to insurers which may be represented—certification by state of residence.
- 40-3336. Limitations as to coverage.
- 40-3337. Commissioner as attorney in fact of nonresident agent to accept service of process.
- 40-3338. Nonresident agent subject to provisions of the Montana Insurance Code.

40-3308. **General qualifications, resident agents and solicitors—other than life insurance agents.** (1) For the protection of the people of this state the commissioner shall not issue, continue, or permit to exist any resident agent or solicitor license as to insurance other than life or disability, except in compliance with this chapter, or as to any individual not qualified therefor as follows:

(a) Must be eighteen (18) years of age or more, or, if for a solicitor's license, must be at least eighteen (18) years of age.

(b) Must be a resident in and of this state.

(c) If for a resident agent's license, must have been appointed as agent by an authorized insurer, subject to issuance of the license.

(d) If for a solicitor's license, must have been appointed as solicitor by a licensed resident agent, subject to issuance of the license, and intend to make and make the soliciting of insurance a principal vocation.

(e) to (h). \* \* \* [Same as parent volume.]

(2) In determining the qualifications as to competence, training, experience and knowledge of the provisions of this code governing his operations as a resident insurance agent or solicitor, as provided for in subsection (1) above, of applicant agents or solicitors proposing to represent as such only insurers who confine their business in this state substantially to the insuring of the property, interests and risks of farmers, the commissioner shall relate such qualifications only to the kinds of insurance policies which the applicant will handle as **such a licensee**.

History: En. Sec. 152, Ch. 286, L. 1959; amd. Sec. 7, Ch. 44, L. 1969; amd. Sec. 5, Ch. 423, L. 1971.

before "agent" where the references appear.

The 1971 amendment reduced the age specified near the beginning of subdivision (1)(a) from 21 to 18 years.

#### Amendments

The 1969 amendment inserted "resident"

40-3309. **General qualification for license as life or disability insurance agent.** For the protection of the people of this state the commissioner shall not issue, continue, or permit to exist any agent license as to life or disability insurance except in compliance with this chapter or as to any individual not qualified therefor as follows:

(1). \* \* \* [Same as parent volume.]

(2) Must be a resident in and of this state; or of another state, if by reciprocal arrangements made by the commissioner with such other state similar privileges therein are granted to residents of this state.



(3) to (8). \* \* \* [Same as parent volume.]

**History:** En. Sec. 153, Ch. 286, L. 1959; sentence of subsection (2) which designated the commissioner as attorney-in-fact of any nonresident agent for acceptance of service of process.  
amd. Sec. 8, Ch. 44, L. 1969.

**Amendments**

The 1969 amendment omitted the second

**40-3310. Licensing of firms and corporations.** (1). \* \* \* [Same as parent volume.]

(2) A nonresident of Montana shall not be named in such license and shall not have the right to exercise the license powers.

(3) A license shall not be issued to a firm or corporation unless organized under the laws of this state and maintaining its principal place of business in this state, and unless the transaction of business under the license is within the purposes stated in the firm's partnership agreement or the corporation's articles.

(4) The licensee shall promptly notify the commissioner of all changes among its members, directors, and officers and of any other individual designated in the license.

**History:** En. Sec. 154, Ch. 286, L. 1959; tion (2) and redesignated former subsections (2) and (3) as subsections (3) and (4).  
amd. Sec. 9, Ch. 44, L. 1969.

**Amendments**

The 1969 amendment inserted subsec-

**40-3311. Licensing of resident agents' association.** (1) The commissioner may license as a resident agent as to kinds of insurance other than life and disability, any association of licensed Montana insurance agents, whether or not incorporated, and formed and existing for substantial purposes other than as to such license.

(2) The license shall be used solely for the purpose of enabling any such association to place, as resident agent, insurance of the properties, interests and risks of the state of Montana and of other public agencies, bodies and institutions, and to receive the customary commission thereon.

(3). \* \* \* [Same as parent volume.]

(4) The license powers may be exercised by such resident agents as may be appointed from time to time for the purpose of the association's board of trustees. The association shall forthwith file the names of such appointees with the commissioner. The names of such appointees need not appear in the license.

(5) The fee for such license shall be the same as for the license of an individual resident agent.

(6) Under the license the association may place insurance with any insurer represented as resident agent by any member of the association, and without requiring that the association have an appointment as resident agent by any such insurer; otherwise, the license shall be subject to the same requirements and prohibitions as apply to individual resident agent licenses.

(7) The commissioner may, after a hearing with notice thereof to the association only (and without notice to the individual officers or members of the association), revoke the license if he finds that continuation thereof is not in the public interest, or for such other applicable grounds as are available under this chapter in the case of individuals licensed as resident agents.

**History:** En. Sec. 155, Ch. 286, L. 1959;  
amd. Sec. 10, Ch. 44, L. 1969.

**Amendments**

The 1969 amendment inserted "resident" before "agent" where the references appear.

**40-3313. Examination.** (1) to (4). \* \* \* [Same as parent volume.]

(5) This section shall not apply to, and no such examination shall be required of:

(a) and (b). \* \* \* [Same as parent volume.]

(c) Any applicant for license as nonresident agent, subject to reciprocal arrangements as provided for in this code.

(d) to (g). \* \* \* [Same as parent volume.]

**History:** En. Sec. 157, Ch. 286, L. 1959;  
amd. Sec. 11, Ch. 44, L. 1969.

**Amendments**

The 1969 amendment rewrote subdivision (5)(c) which provided exemption from examination for "Nonresident applicants for license as life insurance agents."

**40-3314. Conduct of examinations.** (1) The commissioner shall make any examination required under section 40-3313 available to applicants with reasonable frequency, and at place in this state reasonably accessible to such applicants. The commissioner shall make any such examination available at his offices at Helena, Montana, at times within his discretion, but at least once a month.

(2) to (4). \* \* \* [Same as parent volume.]

**History:** En. Sec. 158, Ch. 286, L. 1959;  
amd. Sec. 1, Ch. 156, L. 1969.

**Effective Date**

Section 2 of Ch. 156, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

**Amendments**

The 1969 amendment substituted "at times within his discretion, but at least once a month" for "on each business day" at the end of subsection (1).

**40-3321. Special requirements as to solicitors.** (1) A solicitor shall not be appointed or licensed as to more than one resident agent.

(2) The solicitor's license shall cover all the kinds of insurance, other than life and disability insurance, for which the appointing resident agent is licensed; except, that the solicitor's license shall also cover disability insurance where written by a casualty, property, or surety insurer represented by the resident agent.

(3) A solicitor shall not concurrently be licensed as resident agent except as to life or disability insurance.

(4) A solicitor shall not have authority to bind risks or counter-sign policies.

(5) The transactions of a solicitor under his license shall be in the name of the resident agent by whom appointed, and such resident agent shall be responsible for the acts or omissions of the solicitor within the scope of his appointment.

(6) The solicitor shall maintain his office with that of the appointing resident agent, and records of his transactions under the license shall be maintained as a part of the records of such resident agent.

(7) The solicitor's license shall remain in the custody of the resident agent by whom appointed. Upon termination of the appointment, the resident agent shall give written notice thereof to the commissioner and deliver the license to the commissioner for cancellation.

**History:** En. Sec. 165, Ch. 286, L. 1959; **Amendments**  
amd. Sec. 12, Ch. 44, L. 1969.

The 1969 amendment inserted "resident" before "agent" where the references appear.

#### 40-3327. Adjuster's license—qualifications—catastrophe adjustments.

(1) \* \* \* [Same as parent volume.]

(2) To be licensed as an adjuster the applicant must be qualified therefor as follows:

(a) Must be an individual eighteen (18) years of age or more.

(b) to (e) \* \* \* [Same as parent volume.]

(3) and (4) \* \* \* [Same as parent volume.]

**History:** En. Sec. 171, Ch. 286, L. 1959; **Amendments**  
amd. Sec. 6, Ch. 423, L. 1971.

The 1971 amendment reduced the age specified in subdivision (2)(a) from 21 to 18 years.

**40-3328. Continuance, expiration of licenses.** (1) All solicitor and adjuster licenses issued under this chapter, all agent licenses as to life and/or disability insurance only, and all nonresident agent licenses shall continue in force until expired, suspended, revoked or terminated, but subject to payment to the commissioner annually on or before May 1 of the applicable continuation fee as stated in section 40-2726, accompanied by written request for such continuation. Such request for continuation as to agent licenses for life insurance and/or disability insurance only, shall be made by the insurer in the form of an alphabetical list in duplicate of the names and addresses of its agents whose licenses are to be continued in this state, accompanied by payment of the annual continuation fee therefor as provided in section 40-2726. At the same time the insurer shall also file with the commissioner an alphabetical list in duplicate of the names and addresses of all its agents whose licenses in this state are not to remain in effect. Section 40-3317 (5) shall apply as to any licenses so terminated by the insurer. As to a solicitor's license, such request shall be signed by the agent by whom the licensee is employed.

(2) to (4). \* \* \* [Same as parent volume.]



**History:** En. Sec. 172, Ch. 286, L. 1959;  
amd. Sec. 13, Ch. 44, L. 1969.

#### Amendments

The 1969 amendment inserted "all non-resident agent licensees" in the first sentence of subsection (1).

**40-3332. Acting as insurance agent, solicitor, or adjuster without license—penalty.** Any person, firm, association, or corporation who or which, in this state, acts as an insurance agent, solicitor, or adjuster, without having authority to do so by virtue of a license issued and in force pursuant to the provisions of this chapter shall, upon conviction, be guilty of a misdemeanor and fined five hundred dollars (\$500) or imprisoned in the county jail for ninety (90) days, or both such fine and imprisonment.

**History:** En. 40-3332 by Sec. 1, Ch. 256, L. 1967.

#### Title of Act

An act to provide a penalty for operating without a license as an insurance agent, solicitor, or adjuster.

**40-3333. Nonresident agent may be licensed—reciprocity.** The commissioner may license as an agent a person who is otherwise qualified under this code but who is not a resident of this state, if pursuant to the laws of the state of his residence a similar privilege is extended to persons resident in Montana.

**History:** En. Sec. 1, Ch. 44, L. 1969.

#### Title of Act

An act to provide for licensing nonresident insurance agents domiciled in states

which grant reciprocal privileges to Montana agents; amending sections 40-3308 through 40-3311, 40-3313, 40-3321 and 40-3328, R. C. M. 1947, to ensure that such sections apply to resident agents only.

**40-3334. Nonresident agent's right to solicit business contingent upon reciprocal arrangement.** A licensed nonresident agent shall not have the right to solicit business in Montana unless pursuant to a reciprocal arrangement made by the commissioner with the insurance supervisory official of the licensee's state of residence.

**History:** En. Sec. 2, Ch. 44, L. 1969.

**40-3335. Nonresident agent must be licensed in state of residence—limitation as to insurers which may be represented—certification by state of residence.** An applicant for a nonresident license must be licensed in the state of his residence to act as agent for the kinds of insurance for which he applies for licensing in the state of Montana. The nonresident agent shall be licensed to represent only those insurers which he is licensed to represent in the state of his residence and which are licensed in the state of Montana. The insurance supervisory official of the applicant's state of residence must certify that the applicant is licensed and to the extent of the license.

**History:** En. Sec. 3, Ch. 44, L. 1969.

**40-3336. Limitations as to coverage.** A nonresident agent shall not sign nor countersign policies covering subjects of insurance located or to be performed in Montana. These policies must be countersigned by a licensed resident agent.

**History:** En. Sec. 4, Ch. 44, L. 1969.

40-3337. Commissioner as attorney in fact of nonresident agent to accept service of process. Application for and acceptance of a license as a nonresident agent shall constitute irrevocable appointment of the commissioner as the attorney in fact of said licensee to accept service of process issued in Montana in any action or proceeding against the licensee arising out of the licensing or out of transactions under the license. All process shall be served in duplicate upon the commissioner together with a fee of five dollars (\$5). The commissioner shall then promptly forward a copy of the service by registered mail to the licensee at his last known address. Such service shall constitute personal service upon the licensee.

History: En. Sec. 5, Ch. 44, L. 1969.

40-3338. Nonresident agent subject to provisions of the Montana Insurance Code. All nonresident licensees shall be subject to the provisions of the Montana Insurance Code as though a resident of this state unless otherwise provided.

History: En. Sec. 6, Ch. 44, L. 1969.

#### CHAPTER 35—TRADE PRACTICES AND FRAUDS

Section 40-3506. False financial statements.

40-3512. Unfair discrimination, rebates prohibited—property, casualty, surety insurances.

40-3501. Purposes of trade practice law.

##### Claims Administration

This chapter was never intended to regulate the investigation, settlement, and ne-

gotiation of automobile insurance claims. State ex rel. Cashen v. District Court, 157 M 40, 482 P 2d 567.

40-3506. False financial statements. (1). \* \* \* [Same as parent volume.]

(2) No person shall make any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omit to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer, and any person who aids or abets in any such violation of this section shall be punishable, upon conviction, by a fine of one thousand dollars (\$1,000) or by imprisonment in the county jail for six (6) months, or both such fine and imprisonment.

History: En. Sec. 208, Ch. 268, L. 1959; amd. Sec. 1, Ch. 29, L. 1967.

person who aids or abets \* \* \* or both such fine and imprisonment" at the end of the section.

##### Amendments

The 1967 amendment added "and any

40-3512. Unfair discrimination, rebates prohibited—property, casualty, surety insurances. (1) and (2). \* \* \* [Same as parent volume.]

(3) No such insurer shall make or permit any unfair discrimination either between insureds or property having like insuring or risk characteristics, or between insureds because of race, color, creed, or national origin, in the premium or rates charged for insurance, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the insurance.

(4). \* \* \* [Same as parent volume.]

History: En. Sec. 214, Ch. 286, L. 1959;  
amd. Sec. 1, Ch. 191, L. 1969.

after "unfair discrimination" and "or between insureds because of race, color, creed, or national origin," after "risk characteristics" in subsection (3).

#### Amendments

The 1969 amendment inserted "either"

### CHAPTER 36—RATES AND RATING ORGANIZATIONS

- Section 40-3634. Purpose and intent of chapter.  
 40-3635. "Rating organization" defined.  
 40-3636. "Advisory organization" defined.  
 40-3637. "Member" and "subscriber" defined.  
 40-3638. "Willful" and "willfully" defined.  
 40-3639. Scope of chapter.  
 40-3640. Standards applicable to rates.  
 40-3641. Insurers authorized to act in concert.  
 40-3642. Admitted insurers with common ownership or management—matters relating to cosurety bonds.  
 40-3643. Use of rates, rating systems, underwriting rules and policy or bond forms of rating or advisory organizations—agreements to adhere thereto.  
 40-3644. Exchange of information or experience data—consultation with rating organizations and insurers.  
 40-3645. Agreements for apportionment of casualty insurance—approval of commissioner—review of practices of adherents—revocation of approval.  
 40-3646. Joint underwriters and reinsurers.  
 40-3647. Rating organizations.  
 40-3648. Evidence prerequisite to license.  
 40-3649. Examination of application and investigation of applicant—issuance of license—fee.  
 40-3650. Rules governing eligibility for membership.  
 40-3651. Insurers with common ownership or management.  
 40-3652. Advisory organizations.  
 40-3653. Joint underwriting and joint reinsurance.  
 40-3654. Maintenance of records—necessity—contents—compliance with section—place of maintenance.  
 40-3655. Records and examination.  
 40-3656. Examination of admitted insurers.  
 40-3657. Examination of officers, managers, agents and employees.  
 40-3658. Payment of cost of examination.  
 40-3659. Review of rates.  
 40-3660. Noncompliance of rates.  
 40-3661. Hearings.  
 40-3662. Issuance of order—suspension or revocation of certificate of authority or license.  
 40-3663. Failure to comply with order—suspension or revocation of license or certificate.  
 40-3664. Appeals from the commissioner.  
 40-3665. Information not to be willfully withheld.  
 40-3666. Payment of dividends, etc., not prohibited or regulated—plan for payment not rating system.  
 40-3667. Acts, etc., done by authority of chapter not violation of other laws.  
 40-3668. Administration or enforcement of chapter—supplementation or modification.  
 40-3669. Recording and reporting of loss and expense experience.



**40-3601 to 40-3633. Repealed.****Repeal**

Sections 40-3601 to 40-3633 (Secs. 225 to 257, Ch. 286, L. 1959), relating to the

regulation of insurance rates, were repealed by Sec. 37, Ch. 362, Laws 1969.

**40-3634. Purpose and intent of chapter.** The purpose of this chapter is to promote the public welfare by regulating insurance rates as herein provided to the end that they shall not be excessive, inadequate or unfairly discriminatory, to authorize the existence and operation of qualified rating organizations and advisory organizations and require that specified rating services of such rating organizations be generally available to all admitted insurers, and to authorize co-operation between insurers in rate-making and other related matters.

It is the express intent of this chapter to permit and encourage competition between insurers on a sound financial basis, and nothing in this chapter is intended to give the commissioner power to fix and determine a rate level by classification or otherwise.

**History:** En. Sec. 1, Ch. 362, L. 1969.

**Title of Act**

An act to provide for regulation of insurance rates and rating organizations, ad-

visory organizations and joint underwriting and joint reinsurance; and repealing sections 40-3601 through 40-3633, R. C. M. 1947.

**40-3635. "Rating organization" defined.** In this chapter "rating organization" means every person, other than an admitted insurer, whether located within or outside this state, who has as his object or purpose the making of rates, rating plans or rating systems. Two or more admitted insurers which act in concert for the purpose of making rates, rating plans or rating systems, and which do not operate within the specific authorizations contained in sections 9, 11, 12, 20 and 21 [40-3642, 40-3644, 40-3645, 40-3653 and 40-3654] shall be deemed to be a rating organization. No single insurer shall be deemed to be a rating organization.

**History:** En. Sec. 2, Ch. 362, L. 1969.

**40-3636. "Advisory organization" defined.** In this chapter "advisory organization" means every person, other than an admitted insurer, whether located within or outside this state, who prepares policy forms or makes underwriting rules incident to but not including the making of rates, rating plans or rating systems, or which collects and furnishes to admitted insurers or rating organizations loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a rate-making, capacity. No duly authorized attorney at law, acting in the usual course of his profession, shall be deemed to be an advisory organization.

**History:** En. Sec. 3, Ch. 362, L. 1969.

**40-3637. "Member" and "subscriber" defined.** Unless otherwise apparent from the context, in this chapter:

(a) "Member" means an insurer who participates in or is entitled to participate in the management of a rating, advisory or other organization.

(b) "Subscriber" means an insurer which is furnished at its request (1) with rates and rating manuals by a rating organization of which it is not a member; or (2) with advisory services by an advisory organization of which it is not a member.

**History:** En. Sec. 4, Ch. 362, L. 1969.

40-3638. "Willful" and "willfully" defined. In this chapter "willful" or "willfully," in relation to an act or omission which constitutes a violation of this chapter, means with actual knowledge or belief that such act or omission constitutes such violation and with specific intent to commit such violation.

**History:** En. Sec. 5, Ch. 362, L. 1969.

40-3639. **Scope of chapter.** This chapter applies to all insurers and all kinds of insurance, except that nothing contained in this chapter shall apply to:

- (1) Life insurance.
- (2) Disability insurance.
- (3) Reinsurance, except joint reinsurance as provided in section 20 [40-3653] of this chapter.
- (4) Insurance against loss of or damage to aircraft, their hulls, accessories and equipment, or against liability, other than workmen's compensation and employers' liability, arising out of the ownership, maintenance or use of aircraft.
- (5) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies.
- (6) Title insurance.
- (7) Workmen's compensation or employers' liability insurance written in connection with workmen's compensation.

**History:** En. Sec. 6, Ch. 362, L. 1969.

40-3640. **Standards applicable to rates.** The following standards shall apply to the making and use of rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:

(a) Rates shall not be excessive or inadequate, as herein defined, nor shall they be unfairly discriminatory.

No rate shall be held to be excessive unless (1) such rate is unreasonably high for the insurance provided, and (2) a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable.

No rate shall be held to be inadequate unless (1) such rate is unreasonably low for the insurance provided, and (2) the continued use of such rate endangers the solvency of the insurer using the same, or unless (3) such rate is unreasonably low for the insurance provided and the use of such rate by the insurer using same has, or if continued will have, the effect of destroying competition or creating a monopoly.

(b) Consideration shall be given, to the extent applicable, to past and prospective loss experience within and outside this state, to revenues and profits from reserves, to conflagration and catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses, both country-wide and those specially applicable to this state, and to all other factors, including judgment factors, deemed relevant within and outside this state; and in the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent five-year period for which such experience is available.

Consideration may also be given in the making and use of rates to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

(c) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof.

(d) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among risks that have a probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations, except that no special risk classification may be established based on anything adverse to the insured in a driving record which is three (3) years old or older. Such classifications and modifications shall apply to all risks under the same or substantially the same circumstances or conditions.

**History:** En. Sec. 7, Ch. 362, L. 1969; amd. Sec. 1, Ch. 54, L. 1973; amd. Sec. 1, Ch. 104, L. 1973.

posite section embodying the changes made by both amendments.

#### **Amendments**

#### **Compiler's Notes**

This section was amended twice in 1973, once by Ch. 54 and once by Ch. 104. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a com-

Chapter 54, Laws of 1973, added "except that no special risk classification may be established on anything adverse to the insured in a driving record which is three (3) years old or older" at the end of the fourth sentence of subdivision (d).

Chapter 104, Laws of 1973, inserted "to revenues and profits from reserves," near the beginning of subdivision (b).

**40-3641. Insurers authorized to act in concert.** Subject to and in compliance with the provisions of this chapter authorizing insurers to be members or subscribers of rating or advisory organizations or to engage in joint underwriting or joint reinsurance, two or more insurers may act in concert with each other and with others with respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting



rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research.

**History:** En. Sec. 8, Ch. 362, L. 1969.

**40-3642. Admitted insurers with common ownership or management—matters relating to cosurety bonds.** With respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research, two or more admitted insurers having a common ownership or operating in this state under common management or control, are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer, and to the extent that such matters relate to cosurety bonds, two or more admitted insurers executing such bonds are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer.

**History:** En. Sec. 9, Ch. 362, L. 1969.

**40-3643. Use of rates, rating systems, underwriting rules and policy or bond forms of rating or advisory organizations—agreements to adhere thereto.** Members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules or policy or bond forms of such organizations, either consistently or intermittently, but, except as provided in sections 9, 12, 20 and 21 [40-3642, 40-3645, 40-3653 and 40-3654], shall not agree with each other or rating organizations or others to adhere thereto. The fact that two or more admitted insurers, whether or not members or subscribers of a rating or advisory organization, use, either consistently or intermittently, the rates or rating systems made or adopted by a rating organization, or the underwriting rules or policy or bond forms prepared by a rating or advisory organization, shall not be sufficient in itself to support a finding that an agreement to so adhere exists, and may be used only for the purpose of supplementing or explaining direct evidence of the existence of any such agreement.

**History:** En. Sec. 10, Ch. 362, L. 1969.

**40-3644. Exchange of information or experience data—consultation with rating organizations and insurers.** Licensed rating organizations and admitted insurers are authorized to exchange information and experience data with rating organizations and insurers in this and other states and may consult with them with respect to rate-making and the application of rating systems.

**History:** En. Sec. 11, Ch. 362, L. 1969.

**40-3645. Agreements for apportionment of casualty insurance—approval of commissioner—review of practices of adherents—revocation of approval.** (a) Agreements may be made among admitted insurers

with respect to the equitable apportionment among them of casualty insurance which may be afforded applicants who are in good faith entitled to, but who are unable to procure, such insurance through ordinary methods, and with respect to the use of reasonable rate modifications for such insurance, such agreements to be subject to the approval of the commissioner.

(b) All such agreements shall be submitted in writing to the commissioner for his consideration and approval, together with such information as he may reasonably require. The commissioner shall approve only such agreements as are found by him to contemplate (a) the use of rates which meet the standards prescribed by this chapter, and (b) activities and practices that are not unfair, unreasonable or otherwise inconsistent with the provisions of this chapter.

At any time after such agreements are in effect the commissioner may review the practices and activities of the adherents to such agreements and if, after a hearing upon not less than ten (10) days' notice to such adherents, he finds that any such practice or activity is unfair or unreasonable, or is otherwise inconsistent with the provisions of this chapter, he may issue a written order to the parties to any such agreement, specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such activity or practice. For good cause, and after hearing upon not less than ten (10) days' notice to the adherents thereto, the commissioner may revoke approval of any such agreement.

**History:** En. Sec. 12, Ch. 362, L. 1969.

**40-3646. Joint underwriters and reinsurers.** Upon compliance with the provisions of this chapter applicable thereto any rating organization, advisory organization, and any group, association or other organization of admitted insurers which engages in joint underwriting or joint reinsurance through such organization or by standing agreement among the members thereof, may conduct operations in this state. As respects insurance risks or operations in this state, no insurer shall be a member or subscriber of any such organization, group or association that has not complied with the provisions of this chapter applicable to it.

**History:** En. Sec. 13, Ch. 362, L. 1969.

**40-3647. Rating organizations.** No rating organization shall conduct its operations in this state without first filing with the commissioner a written application for, and securing a license to act as, a rating organization. Any rating organization may make application for and obtain a license as a rating organization if it shall meet the requirements for license set forth in this chapter. Every such rating organization shall file with its application (a) a copy of its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regulations governing the conduct of its business, all duly certified by the custodian or the originals thereof, (b) a list of its members and subscribers, (c) the name and address of a resident of this state upon whom

notices or orders of the commissioner or process affecting such rating organization may be served, and (d) a statement of its qualifications as a rating organization.

History: En. Sec. 14, Ch. 362, L. 1969.

**40-3648. Evidence prerequisite to license.** To obtain and retain a license, a rating organization shall provide satisfactory evidence to the commissioner that it will:

(a) Permit any admitted insurer to become a member of or a subscriber to such rating organization at a reasonable cost and without discrimination, or withdraw therefrom.

(b) Neither have nor adopt any rule or exact any agreement, the effect of which would be to require any member or subscriber, as a condition to membership or subscribership, to adhere to its rates, rating plans, rating systems, underwriting rules or policy or bond forms.

(c) Neither adopt any rule nor exact any agreement, the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

(d) Neither practice nor sanction any plan or act of boycott, coercion or intimidation.

(e) Neither enter into nor sanction any contract or act by which any person is restrained from lawfully engaging in the insurance business.

(f) Notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regulations governing the conduct of its business; its list of members and subscribers; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such organization may be served.

(g) Comply with the provisions of section 21 [40-3654].

History: En. Sec. 15, Ch. 362, L. 1969.

**40-3649. Examination of application and investigation of applicant—issuance of license—fee.** The commissioner shall examine each application for license to act as a rating organization and the documents filed therewith and may make such further investigation of the applicant, its affairs and its proposed plan of business as he deems desirable.

The commissioner shall issue the license applied for within sixty (60) days of its filing with him if, from such examination and investigation, he is satisfied that:

(a) The business reputation of the applicant and its officers is good.

(b) The facilities of the applicant are adequate to enable it to furnish the services it proposes to furnish.

(c) The applicant and its proposed plan of operation conform to the requirements of this chapter.

Otherwise, but only after hearing upon notice the commissioner shall, in writing, deny the application and notify the applicant of his decision and his reasons therefor.



The commissioner may grant an application in part only and issue a license to act as a rating organization for one or more of the classes of insurance or subdivisions thereof or class of risk, or a part or combination thereof as are specified in the application, if the applicant qualifies for only a portion of the classes applied for.

Licenses issued pursuant to this section shall remain in effect until revoked as provided in this chapter. The fee for the license shall be one hundred dollars (\$100) annually which shall be deposited in the general fund.

**History:** En. Sec. 16, Ch. 362, L. 1969;  
amd. Sec. 1, Ch. 206, L. 1973.

**Amendments**

The 1973 amendment added the second sentence to the final paragraph.

**40-3650. Rules governing eligibility for membership.** Subject to the approval of the commissioner, licensed rating organizations may make reasonable rules governing eligibility for membership.

**History:** En. Sec. 17, Ch. 362, L. 1969.

**40-3651. Insurers with common ownership or management.** If two or more insurers having a common ownership or operating in this state under common management are admitted for the classes or types of insurance for which a rating organization is licensed to make rates, the rating organization may require as a condition to membership or subscribership of one or more that all such insurers shall become members or subscribers.

**History:** En. Sec. 18, Ch. 362, L. 1969.

**40-3652. Advisory organizations.** No advisory organization shall conduct its operations in this state unless and until it has filed with the commissioner (a) a copy of its constitution, articles of incorporation, agreement or association, and of its bylaws or rules and regulations governing its activities, all duly certified by the custodian of the originals thereof; (b) a list of its members and subscribers; and (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process may be served.

Every such advisory organization shall notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regulations governing the conduct of its business; its list of members and subscribers; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such organization may be served.

No such advisory organization shall engage in any unfair or unreasonable practice with respect to such activities.

**History:** En. Sec. 19, Ch. 362, L. 1969.

**40-3653. Joint underwriting and joint reinsurance.** Every group, association or other organization of insurers which engages in joint un-

derwriting or joint reinsurance through such group, association or organization, or by standing agreement among the members thereof, shall file with the commissioner (a) a copy of its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regulations governing its activities, all duly certified by the custodian of the originals thereof, (b) a list of its members, and (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process may be served.

Every such group, association or other organization shall notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement or association, and its bylaws, rules and regulations governing the conduct of its business; its list of members; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such group, association or organization may be served.

No such group, association or organization shall engage in any unfair or unreasonable practice with respect to such activities.

**History:** En. Sec. 20, Ch. 362, L. 1969.

**40-3654. Maintenance of records — necessity — contents — compliance with section—place of maintenance.** Every insurer, rating organization or advisory organization, and every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members, and of the data, statistics or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys or inspections made or used by it, so that such records will be available at all reasonable times to enable the commissioner to determine whether such organization, insurer, group or association, and, in the case of an insurer or rating organization, every rate, rating plan and rating system made or used by it, complies with the provisions of this chapter applicable to it. The maintenance of such records in the office of a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this section for any insurer maintaining membership or subscribership in such organization, to the extent that the insurer uses the rates, rating plans, rating systems or underwriting rules of such organization. Such records shall be maintained in an office within this state or shall be made available for examination or inspection within this state by the commissioner at any time upon reasonable notice.

**History:** En. Sec. 21, Ch. 362, L. 1969.

**40-3655. Records and examination.** The commissioner shall, at least once every five (5) years, and may as often as may be reasonable and necessary, make or cause to be made, an examination of each licensed rating organization, and he may, as often as may be reasonable and necessary, make or cause to be made an examination of any advisory

organization or group, association or other organization of insurers which engages in joint underwriting or joint reinsurance.

In lieu of any such examination, the commissioner may accept the report of an examination made by the insurance supervisory official of another state.

In examining any organization, group or association pursuant to this section, the commissioner shall ascertain whether such organization, group or association, and, in the case of a rating organization, any rate or rating system made or used by it, complies with the requirements and standards of this chapter applicable to it.

**History:** En. Sec. 22, Ch. 362, L. 1969.

**40-3656. Examination of admitted insurers.** The commissioner may, at any reasonable time, make or cause to be made an examination of every admitted insurer transacting any class of insurance to which the provisions of this chapter are applicable to ascertain whether such insurer and every rate and rating system used by it for every class of insurance complies with the requirements and standards of this chapter applicable thereto. Such examination shall not be a part of a periodic general examination participated in by representatives of more than one state.

**History:** En. Sec. 23, Ch. 362, L. 1969.

**40-3657. Examination of officers, managers, agents and employees.** The officers, managers, agents and employees of any such organization, group, association or insurer may be examined at any time under oath, and shall exhibit all books, records, accounts, documents or agreements governing its method of operation, together with all data, statistics and information of every kind and character collected or considered by such organization, group, association or insurer in the conduct of the operations to which such examination relates.

**History:** En. Sec. 24, Ch. 362, L. 1969.

**40-3658. Payment of cost of examination.** The reasonable cost of any examination authorized by this article shall be paid by the organization, group, association or insurer to be examined.

**History:** En. Sec. 25, Ch. 362, L. 1969.

**40-3659. Review of rates.** Any person aggrieved by any rate charged, rating plan, rating system or underwriting rule followed or adopted by an insurer or rating organization, may request the insurer or rating organization to review the manner in which the rate, plan, system or rule has been applied with respect to insurance afforded him. Such request may be made by his authorized representative, and shall be written. If the request is not granted within thirty (30) days after it is made, the requester may treat it as rejected. Any person aggrieved by the action of an insurer or rating organization in refusing the review requested, or in failing or refusing to grant all or part of the relief requested, may file a written complaint and request for hearing with the



commissioner, specifying the grounds relied upon. If the commissioner has information concerning a similar complaint, he may deny the hearing. If he believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, he shall deny the hearing. Otherwise, and if he finds that the complaint charges a violation of this chapter and that the complainant would be aggrieved if the violation is proven, he shall proceed as provided in section 27 [40-3660].

**History:** En. Sec. 26, Ch. 362, L. 1969.

**40-3660. Noncompliance of rates.** If, after examination of an insurer, rating organization, advisory organization, or group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, or upon the basis of other information, or upon sufficient complaint as provided in section 26 [40-3659], the commissioner has good cause to believe that such insurer, organization, group or association, or any rate, rating plan or rating system made or used by any such insurer or rating organization, does not comply with the requirements and standards of this chapter applicable to it, he shall, unless he has good cause to believe such noncompliance is willful, give notice, in writing, to such insurer, organization, group or association stating therein in what manner and to what extent such noncompliance is alleged to exist and specifying therein a reasonable time, not less than ten (10) days thereafter, in which such noncompliance may be corrected. Notices under this section shall be confidential as between the commissioner and the parties unless a hearing is held under section 28 [40-3661].

**History:** En. Sec. 27, Ch. 362, L. 1969.

**40-3661. Hearings.** If the commissioner has good cause to believe such noncompliance to be willful, or if within the period prescribed by the commissioner in the notice required by section 27 [40-3660], the insurer, organization, group or association does not make such changes as may be necessary to correct the noncompliance specified by the commissioner, or establish to the satisfaction of the commissioner that such specified noncompliance does not exist, then the commissioner may hold a public hearing in connection therewith, provided that within a reasonable period of time, which shall be not less than ten (10) days before the date of such hearing, he shall mail written notice specifying the matters to be considered at such hearing to such insurer, organization, group or association. If no notice has been given as provided in section 27 [40-3660], such notice shall state therein in what manner and to what extent noncompliance is alleged to exist. The hearing shall not include any additional subjects not specified in the notices required by section 27 [40-3660] or this section.

**History:** En. Sec. 28, Ch. 362, L. 1969.

**40-3662. Issuance of order—suspension or revocation of certificate of authority or license.** If, after a hearing pursuant to section 28 [40-3661], the commissioner finds:

(a) That any rate, rating plan or rating system violates the provisions of this chapter applicable to it, he may issue an order to the insurer or rating organization which has been the subject of the hearing, specifying in what respects such violation exists and stating when, within a reasonable period of time, the further use of such rate or rating system by such insurer or rating organization in contracts of insurance made thereafter shall be prohibited.

(b) That an insurer, rating organization, advisory organization, or a group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, is in violation of the provisions of this chapter applicable to it, other than the provisions dealing with rates, rating plans or rating systems, he may issue an order to such insurer, organization, group or association which has been the subject of the hearing, specifying in what respects such violation exists and requiring compliance within a reasonable time thereafter.

(c) That the violation of any of the provisions of this chapter applicable to it by any insurer or rating organization which has been the subject of hearing was willful, he may suspend or revoke, in whole or in part, the certificate of authority of such insurer or the license of such rating organization with respect to the class of insurance which has been the subject matter of the hearing.

(d) That any rating organization has willfully engaged in any fraudulent or dishonest act or practices, he may suspend or revoke, in whole or in part, the license of such organization, in addition to any other penalty provided in this chapter.

**History:** En. Sec. 29, Ch. 362, L. 1969.

**40-3663. Failure to comply with order—suspension or revocation of license or certificate.** In addition to other penalties provided in this code, the commissioner may suspend or revoke, in whole or in part, the license of any rating organization or the certificate of authority of any insurer with respect to the class or classes of insurance specified in such order which fails to comply within the time limited by such order or any extension thereof which the commissioner may grant, with an order of the commissioner lawfully made by him pursuant to section 29 [40-3662] and effective pursuant to section 31 [40-3664].

**History:** En. Sec. 30, Ch. 362, L. 1969.

**40-3664. Appeals from the commissioner.** Any person, insurer or rating organization aggrieved by any order or decision made by the commissioner under this chapter may appeal therefrom to the district court of the county where the aggrieved party may reside, or has his principal place of business in this state, or to the district court of Lewis and Clark county, Montana. The appeal shall be taken within thirty (30) days from the making and filing of the order or decision by filing in the office of the commissioner a notice of the appeal in writing. The commissioner shall, within twenty (20) days after filing of the notice, make and return to the district court a full and complete certified transcript of

the finding and order appealed from and of all parts relative thereto on file in his office, including the notice of appeal. Upon filing of the certified transcript, all matters involved therein shall be brought on for trial upon the merits at the next term of the court after the filing of the transcript, unless otherwise ordered by the court. Upon the trial, the findings of fact on which the order is based shall be prima facie evidence of the matters therein stated. During the pendency of the proceedings upon review, the order of the commissioner shall be suspended, but in the event of a final determination against any insurer, any overcharge by the insurer during review shall be refunded to the persons entitled thereto.

**History:** En. Sec. 31, Ch. 362, L. 1969.

**40-3665. Information not to be willfully withheld.** (a) No person, insurer or organization shall willfully withhold information from, or knowingly give false or misleading information to, the commissioner or to any rating organization, advisory organization, insurer or group, association or other organization of insurers, which will affect the rates, rating systems or premiums for the classes of insurance to which the provisions of this chapter are applicable.

(b) Any person, insurer, organization, group or association who fails to comply with a final order of the commissioner under this chapter shall be liable to the state in an amount not exceeding fifty dollars (\$50), but if such failure be willful, he or it shall be liable to the state in an amount not exceeding five thousand dollars (\$5,000) for such failure. The commissioner shall collect the amount so payable and may bring an action in the name of the people of the state of Montana to enforce collection. Such penalties may be in addition to any other penalties provided by law.

(c) A willful violation of the provisions of this chapter by any person is a **misdemeanor**.

**History:** En. Sec. 32, Ch. 362, L. 1969.

**40-3666. Payment of dividends, etc., not prohibited or regulated—plan for payment not rating system.** Nothing in this chapter shall be construed to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers. A plan for the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers shall not be deemed a rating plan or system.

**History:** En. Sec. 33, Ch. 362, L. 1969.

**40-3667. Acts, etc., done by authority of chapter not violation of other laws.** No act done, action taken or agreement made pursuant to the authority conferred by this chapter shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this



state heretofore or hereafter enacted which does not specifically refer to insurance.

History: En. Sec. 34, Ch. 362, L. 1969.

**40-3668. Administration or enforcement of chapter—supplementation or modification.** The administration and enforcement of this chapter shall be governed solely by the provisions of this chapter. Except as provided in this chapter, no other law relating to insurance and no other provisions in this code heretofore or hereafter enacted shall apply to or be construed as supplementing or modifying the provisions of this chapter unless such other law or other provision expressly so provides and specifically refers to the sections of this chapter which it intends to supplement or modify.

History: En. Sec. 35, Ch. 362, L. 1969.

**40-3669. Recording and reporting of loss and expense experience.**

(a) The commissioner shall promulgate and may modify reasonable rules and statistical plans, reasonably adapted to each of the rating systems used, and which shall thereafter be used by each insurer in the recording and reporting of its loss and country-wide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rates comply with the applicable standards of this act. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of country-wide expense experience.

(b) In promulgating such rules and plans the commissioner shall give due consideration to the rating systems in use in this state and, in order that such rules and plans may be as uniform as is practicable among the several states to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system used by it.

(c) The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

History: En. Sec. 36, Ch. 362, L. 1969.

**Repealing Clause**

Section 37 of Ch. 362, Laws 1969 read "Sections 40-3601 through 40-3633, R. C. M. 1947, are hereby repealed."

**CHAPTER 37—THE INSURANCE CONTRACT**

Section 40-3729. Assignment of policies.

40-3738. Continuation of coverage for handicapped—individual contracts.

40-3739. Continuation of coverage for handicapped—group contracts.

40-3740. Equal application notwithstanding contrary exemption or law.

**40-3713. Representations in applications.****Misstatements Material to Acceptance**

Where application for automobile insurance contained nonfraudulent misstatements as to driving history on one insured which were material to acceptance of risk and hazard assumed by plaintiff, and insurer's agent received both letter from insurer rejecting application and notice of accident involving automobile to be insured on same day, insurer was not liable. *American Indemnity Co. v. Elsup*, 302 F Supp 878.

**Waiver of Misrepresentation**

Motorist injured by negligence of insured was entitled to recover under insured's policy, even though insurance company was entitled to rescind policy for violation of this statute since insurance policy was effective until rescinded and since subsequent to discovering insured's fraud, insurance company acted affirmatively in accepting premium payments and paying other claims arising out of same accident all of which constituted implied waiver of right to rescind. *McLane v. Farmers Ins. Exchange*, 150 M 116, 432 P 2d 98.

**40-3725. Construction of policies.****Construction against Insurer**

A policy of insurance must be liberally construed in favor of the insured, and strictly construed against the insurer. *Insurance Co. of North America v. Butte Aero Sales & Service*, 243 F Supp 276.

Endorsement on insurance policy limiting aircraft insurance to named person and anyone else having certain number of hours of flying time and proper certification was construed against the insurer to mean that the named insured was at all times covered while others who flew the craft had to be certified also in order to be covered by the policy. *Insurance Co. of North America v. Butte Aero Sales & Service*, 243 F Supp 276, distinguished in 429 F 2d 896, 898.

**Crop Insurance**

Crop-hail insurance policy, which re-

quired information pertaining to acreage of crop prior to issuance, should be strictly construed against the insurer in determining that value of crop damage was based on percentage of area destroyed rather than on estimated crop value, since policy form was provided by the company. *Billmeyer v. Farmers Union Property & Casualty Co.*, 146 M 38, 404 P 2d 322, 20 ALR 3d 916.

Where the basis for recovery under a crop-hail insurance policy was on the acreage insured, stipulation that amount payable should not exceed the "actual loss or damage," read in light of the entire policy, pertained to loss or damage representing the percentage of injury to the crop, and not the value of the crop. *Billmeyer v. Farmers Union Property & Casualty Co.*, 146 M 38, 404 P 2d 322, 20 ALR 3d 916.

**40-3729. Assignment of policies.** A policy, or group certificate issued thereunder, may be assignable or not assignable, as provided by its terms. Subject to its terms relating to the assignability, any life or disability policy, or group certificate under either, whether heretofore or hereafter issued, under the terms of which the beneficiary may be changed upon the sole request of the insured or owner, may be assigned either by pledge or transfer of title, by an assignment executed by the insured or owner, alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. An assignment valid hereunder may transfer to the assignee all the rights, privileges, and incidents of ownership of the assignor in the policy or group certificate, including, but not limited to the rights to designate beneficiaries and of a group certificate holder to have an individual policy issued in accordance with sections 40-3918 and 40-3919. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received at its home office written notice of termination of the assignment or pledge, or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment; provided, however, that the insurer shall not be prej-

udiced by any payment made or action taken inconsistent with the terms of any assignment before the insurer has received and had reasonable time to act on written notice of such assignment. This section acknowledges, declares and codifies the existing right of assignment of interests under insurance policies. An assignment otherwise valid shall not be invalid because it was made prior to the effective date of this section.

**History:** En. Sec. 286, Ch. 286, L. 1959; amd. Sec. 1, Ch. 167, L. 1971.

#### Amendments

The 1971 amendment inserted references to group certificates in the first and

second sentences; inserted "or owner" following "insured" in two places in the second sentence; inserted the third sentence; added the proviso to the fourth sentence; and added the final two sentences.

### 40-3733. Claims administration not waiver.

#### Waiver of Defects in Proof of Loss

Insurer's receipt and retention for 60 days of statement of loss due to fire constituted waiver of defense that insured

failed to provide adequate proof of loss. *Staggers v. United States Fidelity & Guaranty Co.*, 159 M 254, 496 P 2d 1161.

**40-3738. Continuation of coverage for handicapped—individual contracts.** An individual hospital or medical expense insurance policy, or hospital or medical service plan contract, delivered or issued for delivery in this state more than one hundred twenty (120) days after the effective date of this act, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both (a) incapable of self-sustaining employment by reason of mental retardation or physical handicap and (b) chiefly dependent upon the policyholder or subscriber for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer or hospital or medical service plan corporation by the policyholder or subscriber within thirty-one (31) days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

**History:** En. 40-3738 by Sec. 1, Ch. 298, L. 1971.

#### Title of Act

An act to provide for the continuation of coverage under individual and group

health insurance and hospital and medical service plan contracts for mentally retarded or physically handicapped dependent children; amending chapter 37, Title 40, R. C. M. 1947.

**40-3739. Continuation of coverage for handicapped—group contracts.** A group hospital or medical expense insurance policy, or hospital or medical service plan contract, delivered or issued for delivery in this state more than one hundred twenty (120) days after the effective date of this act, which provides that coverage of a dependent child of an employee or other member of the covered group shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and



continues to be both (a) incapable of self-sustaining employment by reason of mental retardation or physical handicap and (b) chiefly dependent upon the employee or member for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer or hospital or medical service plan corporation, by the employee or member within thirty-one (31) days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation, but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

History: En. 40-3739 by Sec. 1, Ch. 298, L. 1971.

40-3740. Equal application notwithstanding contrary exemption or law. The provisions of this act shall have equal application to hospital or medical expense insurance policies, and hospital and medical service plan contracts, any other exemption or law to the contrary notwithstanding.

History: En. Sec. 2, Ch. 298, L. 1971.

#### CHAPTER 38—LIFE INSURANCE AND ANNUITIES

Section 40-3802. "Industrial life insurance" defined.

40-3831. Standard nonforfeiture law—life insurance.

40-3802. "Industrial life insurance" defined. For the purposes of this code "industrial life insurance" is that form of life insurance written under policies of face amount of two thousand dollars (\$2,000) or less bearing the words "industrial policy" imprinted on the face thereof as part of the descriptive matter, and under which premiums are payable monthly or more often.

History: En. Sec. 296, Ch. 286, L. 1959; amd. Sec. 1, Ch. 30, L. 1969.

#### Amendments

The 1969 amendment raised the limit for policies from \$1,000 to \$2,000.

40-3831. Standard nonforfeiture law—life insurance. (1) to (3). \* \* \* [Same as parent volume.]

(4) Cash surrender value—life: Any cash surrender value available under the policy in the event of default in the premium payment due on any policy anniversary, whether or not required by subsection (2) of this section, shall be an amount not less than the excess, if any, of the present value on such anniversary of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions if there had been no default, over the sum of:

(a) The then present value of the adjusted premiums as defined in subsections (6), (7), (7-a), (8), (8-a) and (8-b) of this section, corresponding to premiums which would have fallen due on and after such anniversary, and

(b). \* \* \* [Same as parent volume.]

(5) to (7). \* \* \* [Same as parent volume.]

(7-a) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be

equal to (i) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased during the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted premiums for such term insurance, the foregoing items (i) and (ii) being calculated separately and as specified in subsections (6) and (7) except that, for the purposes of (b), (c), and (d) of subsection (6), the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (ii) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (i).

(8) Except as otherwise provided in subsections (8-a) and (8-b), all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the commissioner's 1941 standard ordinary mortality table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated, at the option of the insurer with approval of the commissioner, according to an age younger than the actual age of the insured and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 standard industrial mortality table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half per cent ( $3\frac{1}{2}\%$ ) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than one hundred thirty per cent (130%) of the rates of mortality according to such applicable table, provided further that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

(8-a) In the case of ordinary policies issued on or after the operative date of this subsection (8-a) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the commissioner's 1958 standard ordinary mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that such rate of interest shall not exceed three and one-half per cent ( $3\frac{1}{2}\%$ ) per annum except that a rate of interest not exceeding four per cent (4%) per annum may be used for policies issued on or after the effective date of this amendatory act of 1973 and prior to January 1, 1986, and provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1958 extended term insurance table. Provided, further, that

for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

After the effective date of this subsection (8-a), any insurer may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January first, nineteen hundred and sixty-six. After the filing of such notice, then upon such specified date (which shall be the operative date of this subsection for such insurer), this subsection shall become operative with respect to the ordinary policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this subsection for such insurer shall be January first, nineteen hundred and sixty-six.

(8-b) In the case of industrial policies issued on or after the operative date of this subsection (8-b) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of commissioners 1961 standard industrial mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that such rate of interest shall not exceed three and one-half per cent ( $3\frac{1}{2}\%$ ) per annum except that a rate of interest not exceeding four per cent (4%) per annum may be used for policies issued on or after the effective date of this amendatory act of 1973 and prior to January 1, 1986. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioners 1961 industrial extended term insurance table. Provided, further, that for insurance issued on a substandard basis the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

After the effective date of this subsection (8-b), any insurer may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January first, nineteen hundred and sixty-eight. After the filing of such notice, then upon such specified date (which shall be the operative date of this subsection for such insurer), this subsection shall become operative with respect to the industrial policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this subsection for such insurer shall be January first, nineteen hundred and sixty-eight.

(9) Calculation of values—life: Any cash surrender value and any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (4), (5), (6), (7), (7-a), (8), (8-a) and (8-b) of this section may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up



term additions, shall be not less than the dividends used to provide such additions. Notwithstanding the provisions of subsection (4) of this section, additional benefits payable:

(a) In the event of death or dismemberment by accident or accidental means,

(b) In the event of total and permanent disability,

(c) As reversionary annuity or deferred reversionary annuity benefits,

(d) As term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply,

(e) As term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid up by reason of the death of a parent of the child, and

(f) As other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits,

Shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(10) Exceptions. This section shall not apply to any reinsurance, group insurance, pure endowment, annuity or reversionary annuity contract, nor to any term policy of uniform amount, or renewal thereof, of fifteen (15) years or less expiring before age 66 for which uniform premiums are payable during the entire term of the policy, nor to any term policy of decreasing amount on which each adjusted premium, calculated as specified in subsections (6), (7), (7-a), (8), (8-a) and (8-b) of this section is less than the adjusted premiums so calculated on a policy issued at the same age and for the same initial amount of insurance for a term defined as follows: For ages at issue fifty (50) and under, the term shall be fifteen (15) years; thereafter, the term shall decrease one (1) year for each year of age beyond fifty (50).

(11). \* \* \* [Same as parent volume.]

**History:** En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973.

#### Amendments

The 1965 amendment inserted subsection (8-b); inserted references to subsection (8-b) in subsections (4) (a), (8), (9), and (10); and made minor changes in punctuation in subsections (7-a) and (8).

The 1973 amendment inserted "except that a rate of interest not exceeding four per cent (4%) per annum may be used for policies issued on or after the effective

date of this amendatory act of 1973 and prior to January 1, 1986" in the first sentences of subsections (8-a) and (8-b); and made minor changes in phraseology.

#### Effective Dates

Section 2 of Ch. 42, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 22, 1965.

Section 3 of Ch. 341, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 17, 1973.

## CHAPTER 39—GROUP LIFE INSURANCE

Section 40-3905.1. State employee groups.  
40-3906. Debtor groups.

**40-3905.1. State employee groups.** All departments, bureaus, boards, commissions and agencies of the state of Montana are hereby authorized upon approval by a two-thirds ( $\frac{2}{3}$ ) vote of the officers and employees of such departments, bureaus, boards, commissions and agencies to enter into group hospitalization, medical, health, accident and/or group life insurance contracts or plans for the benefit of their officers, employees and their dependents. The premiums required from time to time to maintain such insurance in force shall be paid by the insured officers and employees, and the auditor shall deduct said premiums from the salary or wages of each officer or employee who elects to become insured, on the officer or employee's written order, and issue his warrant therefor to the insurer. For the purpose of this act, the plans of health service corporations for defraying or assuming the cost of professional services of licentiates in the field of health, or the services of hospitals, clinics or sanitariums, or both professional and hospital services, shall be construed as group insurance, and the dues payable under such plans shall be construed as premiums therefor.

**History:** En. Sec. 1, Ch. 248, L. 1963.

**Effective Date**

**Title of Act**

An act relating to group life and health insurance for state officers and employees and providing for payroll deductions.

Section 2 of Ch. 248, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 11, 1963.

**40-3906. Debtor groups.** The lives of a group of individuals may be insured under a policy issued to a creditor, who shall be deemed the policyholder, to insure the debtors of the creditor, subject to the following requirements:

(1) to (3). \* \* \* [Same as parent volume.]

(4) The amount of insurance on the life of any debtor shall at no time exceed the amount owed by him to the creditor. Where the indebtedness is repayable in one sum to the creditor, the insurance on the life of any debtor shall in no instance be in effect for a period in excess of five years, except that such insurance may be continued for an additional period not exceeding six months in the case of default, extension or recasting of the loan.

(5). \* \* \* [Same as parent volume.]

**History:** En. Sec. 333, Ch. 286, L. 1959; amd. Sec. 1, Ch. 132, L. 1965.

years" for "eighteen months" in the second sentence of subsection (4).

**Amendment**

The 1965 amendment deleted "or ten thousand dollars (\$10,000), whichever is less" at the end of the first sentence of subsection (4); and substituted "five

**Repealing Clause**

Section 2 of Ch. 132, Laws 1965 repealed all acts and parts of acts in conflict therewith.

**40-3908. Repealed.**

**Repeal**

Section 40-3908 (Sec. 335, Ch. 286, L. 1959), relating to limits on amount of

group life insurance issued, was repealed by Sec. 1, Ch. 104, Laws of 1974.

## CHAPTER 40—DISABILITY INSURANCE POLICIES

Section 40-4002. Scope, format of policy.

40-4002.1. Coverage of newborn under family policy.

40-4008. Notice of claim.

40-4035. Health insurance coverage of services of state institutions.

40-4036. Locus of purchase.

40-4037. Exclusion of state institution services void.

40-4038. Rate of payment for state institution services.

**40-4002. Scope, format of policy.** No policy of disability insurance shall be delivered or issued for delivery to any person in this state unless it otherwise complies with this code, and complies with the following:

(1) to (3) \*\*\* [Same as parent volume.]

(4) (a) No policy or certificate of insurance, which in addition to covering the insured, also covers members of the insured's family, may be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an insured from and after the moment of birth;

(b) The coverage for newborn infants shall be the same as provided by the policy for other covered persons; provided, however, that for newborn infants there shall be no waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons;

(5) The style, arrangement and over-all appearance of the policy shall give no undue prominence to any portion of the text, and every printed portion of the text of the policy and of any endorsements or attached papers shall be plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten (10) point with a lower case unspaced alphabet length not less than one hundred and twenty (120) point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions);

(6) The exceptions and reductions of indemnity shall be set forth in the policy and, other than those contained in sections 40-4004 to 40-4026, inclusive, of this chapter, shall be printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "Exceptions," or "Exceptions and Reductions," except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies;

(7) Each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof;

(8) The policy shall contain no provision purporting to make any portion of the charter, rules, constitution or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner.



**History:** En. Sec. 352, Ch. 285, L. 1959; amd. Sec. 1, Ch. 74, L. 1973; amd. Sec. 1, Ch. 83, L. 1974.

#### **Amendments**

The 1973 amendment inserted a new subsection (4); and renumbered for-

mer subsections (4), (5), (6) and (7) as subsections (5), (6), (7) and (8), respectively.

The 1974 amendment redesignated the former subdivision (4) as subdivision (4)(a) and added subdivision (4)(b).

**40-4002.1. Coverage of newborn under family policy.** (a) Each policy of disability insurance or certificate issued thereunder, which in addition to covering the insured, also covers members of the insured's family shall contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured.

(b) The coverage for newborn infants shall be the same as provided by the policy for the other covered persons; provided, however, that for newborn infants there shall be no waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons.

**History:** En. 40-4002.1 by Sec. 2, Ch. 74, L. 1973; amd. Sec. 2, Ch. 83, L. 1974.

ment of birth, to each newborn infant of any insured; and amending sections 40-4002, 40-4101 and 40-4102.

#### **Title of Act**

An act providing that disability insurance policies and plans covering members of the insured's family as well as the insured shall grant immediate accident and sickness coverage, from and after the mo-

#### **Amendments**

The 1974 amendment designated the former language of this section as subdivision (a); and added subdivision (b).

**40-4008. Notice of claim.** There shall be a provision as follows:

"Notice of Claim: Written notice of claim must be given to the insurer within six (6) months after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at \_\_\_\_\_ (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer."

In a policy providing a loss-of-time benefit which may be payable for at least two (2) years, an insurer may at its option insert the following between the first and second sentences of the above provision:

"Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall, at least once in every six (6) months after having given notice of the claim, give to the insurer notice of continuance of the disability, except in the event of legal incapacity. The period of six (6) months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period

of six (6) months preceding the date on which such notice is actually given."

History: En. Sec. 358, Ch. 286, L. 1959; amd. Sec. 1, Ch. 189, L. 1974.

#### Amendments

The 1974 amendment substituted "within six (6) months" for "within twenty (20) days" relative to notice of claim.

### 40-4011. Time of payment of claims.

#### Criminal Penalty

Separate penalty provided in section 40-2617 is applicable to violation of this section where insurer's acts or omissions in avoiding prompt payment are oppressive, malicious, or fraudulent. State ex rel. Larson v. District Court, 149 M 131, 423 P 2d 598, distinguished in 157 M 40, 44, 482 P 2d 567.

#### Exemplary Damages

Insured was entitled to actual damages for default on policy requiring insurer to pay car installments upon insured's disability as well as to exemplary damages for default as being in violation of statute requiring prompt payment of claim where insurer's acts or omissions in avoiding prompt payment are oppressive, malicious, or fraudulent. State ex rel. Larson v. District Court, 149 M 131, 423 P 2d 598, distinguished in 157 M 40, 44, 482 P 2d 567.

### 40-4034. Violations.

#### Prompt Payment of Claims

Separate penalty provided in section 40-2617 is applicable to violation of section 40-4011 where insurer's acts or omissions in avoiding prompt payment are oppres-

sive, malicious, or fraudulent. State ex rel. Larson v. District Court, 149 M 131, 423 P 2d 598, distinguished in 157 M 40, 44, 482 P 2d 567.

**40-4035. Health insurance coverage of services of state institutions.** From and after the effective date of this act, it shall be unlawful for any insurance company or health service corporation issuing disability insurance policies in Montana to exclude from coverage in a disability insurance policy services rendered the insured while a resident in a Montana state institution; provided such services to such insured would be covered by such disability insurance policy if rendered to him outside such Montana state institution.

History: En. Sec. 1, Ch. 50, L. 1973.

#### Title of Act

An act prohibiting insurance companies issuing disability insurance policies in Montana from excluding therefrom coverage for services rendered an insured while a resident of a Montana state institution, if such services would have been covered if rendered to an insured outside such institution; defining "issued in Montana"; providing that such exclusion, if appearing in a disability insurance policy issued in Montana after the effective date of this act, is void; providing for rate of payment; and providing an effective date.

tution, if such services would have been covered if rendered to an insured outside such institution; defining "issued in Montana"; providing that such exclusion, if appearing in a disability insurance policy issued in Montana after the effective date of this act, is void; providing for rate of payment; and providing an effective date.

**40-4036. Locus of purchase.** A disability insurance policy shall be deemed to be "issued in Montana" if the insured purchasing such disability insurance policy is, at the time of such purchase, residing in the state of Montana.

History: En. Sec. 2, Ch. 50, L. 1973.

**40-4037. Exclusion of state institution services void.** If the exclusion, prohibited by this act, should appear in a disability insurance policy issued in Montana after the effective date of this act, such provision shall be deemed void and such disability insurance policy will be deemed to cover services rendered the insured in a Montana state institution if such

services would have been covered if rendered to an insured outside of a Montana state institution.

**History:** En. Sec. 3, Ch. 50, L. 1973.

**40-4038. Rate of payment for state institution services.** Payment for services rendered in a Montana state institution shall be to the same extent and at the same rates, according to the provisions of such disability policy, which would be paid for such services if rendered outside a Montana state institution.

**History:** En. Sec. 4, Ch. 50, L. 1973.

the act should be in effect from and after its passage and approval. Approved February 14, 1973.

**Effective Date**

Section 5 of Ch. 50, Laws 1973 provided

## CHAPTER 41—GROUP AND BLANKET DISABILITY INSURANCE

Section 40-4101. "Group disability insurance" defined—eligible groups.

40-4102. Required provisions of group policies.

40-4108. Policies to provide for freedom of choice of practitioners.

40-4109. Scope of professional practice not enlarged—hospitals.

**40-4101. "Group disability insurance" defined—eligible groups.** Group disability insurance is hereby declared to be that form of disability insurance covering groups of persons as defined below, with or without one or more members of their families or one or more of their dependents, or covering one or more members of the families or one or more dependents of such groups of persons, and issued upon the following basis:

(1) to (6) \* \* \* [Same as parent volume.]

(7) (a) No group disability policy or certificate of insurance, which, in addition to covering persons in the insured group, also covers members of such person's family, may be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of persons in the insured group from and after the moment of birth.

(b) The coverage for newborn infants shall be the same as provided by the policy for other covered persons; provided, however, that for newborn infants there shall be no waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons.

**History:** En. Sec. 385, Ch. 286, L. 1959; amd. Sec. 3, Ch. 74, L. 1973; amd. Sec. 3, Ch. 83, L. 1974.

The 1974 amendment designated the former language of subdivision (7) as subdivision (7)(a) and added subdivision (7)(b).

### Amendments

The 1973 amendment added subsection (7).

**40-4102. Required provisions of group policies.** Each such group disability insurance policy shall contain in substance the following provisions:

(1) to (3) \* \* \* [Same as parent volume.]

If the policy or certificate issued thereunder, in addition to covering persons in the insured group, also covers members of such person's family,



it shall contain an additional provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any person in the insured group.

The coverage for newborn infants shall be the same as provided by the policy for other covered persons; provided, however, that for newborn infants there shall be no waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons.

**History:** En. Sec. 386, Ch. 286, L. 1959; amd. Sec. 4, Ch. 74, L. 1973; amd. Sec. 4, Ch. 83, L. 1974.

The 1974 amendment added the final paragraph.

#### Amendments

The 1973 amendment added the paragraph following subsection (3).

#### Effective Date

Section 5 of Ch. 83, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 4, 1974.

**40-4108. Policies to provide for freedom of choice of practitioners.** All policies of disability insurance, including individual, group and blanket policies, and all policies insuring the payment of compensation under the Workmen's Compensation Act shall provide the insured shall have full freedom of choice in the selection of any duly licensed physician, osteopath, chiropractor, optometrist, chiropodist or clinical psychologist for treatment of any illness or injury within the scope and limitations of his practice. Whenever such policies insure against the expense of drugs, the insured shall have full freedom of choice in the selection of any duly licensed and registered pharmacist.

**History:** En. Sec. 1, Ch. 172, L. 1967; amd. Sec. 1, Ch. 402, L. 1971.

#### Title of Act

An act requiring disability insurance and workmen's compensation policies to provide the insured shall have full freedom of choice in the selection of any duly licensed physician, osteopath, chiroprac-

tor, optometrist or chiropodist for treatment of illness or injury; providing a like freedom of choice in the selection of pharmacists; providing an effective date; and containing a repealing clause.

#### Amendments

The 1971 amendment inserted "or clinical psychologist."

**40-4109. Scope of professional practice not enlarged—hospitals.** Nothing in this act shall be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in section 1 [40-4108]; nor shall this act be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals.

**History:** En. Sec. 2, Ch. 172, L. 1967.

#### Effective Date

Section 3 of Ch. 172, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 27, 1967.

#### Repealing Clause

Section 4 of Ch. 172, Laws 1967 repealed all acts and parts of acts in conflict therewith.

## CHAPTER 42—CREDIT LIFE AND DISABILITY INSURANCE

### Section 40-4203. Scope of chapter.

40-4206. Amount of credit life insurance and credit disability insurance.

40-4211. Premiums and refunds.

**40-4203. Scope of chapter.** All life insurance and all disability insurance sold in connection with loans or other credit transactions shall be subject to the provisions of this chapter except such insurance sold in connection with a loan or other credit transaction of more than ten (10) years' duration.

**History:** En. Sec. 394, Ch. 286, L. 1959; amd. Sec. 1, Ch. 31, L. 1969; amd. Sec. 1, Ch. 323, L. 1974.

period of exempt transactions from five years to ten years.

Chapter 323, Laws of 1974 purported to amend this section but made no change in the text.

#### **Amendments**

The 1969 amendment increased the time

**40-4206. Amount of credit life insurance and credit disability insurance.** (1) Credit life insurance: The amount of credit life insurance shall be equal to the indebtedness, provided that the original indebtedness does not exceed the sum of fifteen thousand dollars (\$15,000). If the original indebtedness exceeds the sum of fifteen thousand dollars (\$15,000), the amount of credit life insurance shall not exceed the indebtedness. Where indebtedness repayable in substantially equal installments is secured by an individual policy of credit life insurance the amount of insurance shall not exceed the approximate unpaid indebtedness on the date of death and, where secured by a group policy of credit life insurance shall not exceed the exact amount of unpaid indebtedness on such date. Except, that agricultural loans not exceeding one year may be written up to the amount of the loan commitment on a nondecreasing or level term plan.

(2) Credit disability insurance: The amount of periodic indemnity payable by credit disability insurance in the event of disability, as defined in the policy, shall be equal to the aggregate of the periodic scheduled unpaid installments of indebtedness and shall not exceed the original indebtedness divided by the number of periodic installments, provided that the original indebtedness does not exceed the sum of fifteen thousand dollars (\$15,000). If the original indebtedness exceeds the sum of fifteen thousand dollars (\$15,000), the amount of periodic indemnity payable by credit disability insurance in the event of disability, as defined in the policy, shall not exceed the aggregate of the periodic scheduled unpaid installments of indebtedness and shall not exceed the original indebtedness divided by the number of periodic installments.

**History:** En. Sec. 397, Ch. 286, L. 1959; amd. Sec. 2, Ch. 323, L. 1974.

serted the second sentence in subsection (1); substituted "shall be equal to the aggregate" for "shall not exceed the aggregate" in the first sentence of subsection (2); and added the proviso to the first sentence and added the second sentence in subsection (2).

#### **Amendments**

The 1974 amendment substituted "shall be equal to" for "shall not exceed" in the first sentence of subsection (1); added the proviso to the first sentence and in-

**40-4211. Premiums and refunds.** (1) to (3). \* \* \* [Same as parent volume.]

(4) The amount charged to a debtor for any credit life or credit disability insurance shall not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined.

**History:** En. Sec. 402, Ch. 286, L. 1959; amd. Sec. 1, Ch. 113, L. 1967.

#### **Amendments**

The 1967 amendment added subsection (4) to this section.

## CHAPTER 43—PROPERTY INSURANCE CONTRACTS

Section 40-4303. Personal property—when loss computation to be based on specific valuation.

## 40-4301. Measure of the indemnity.

## References

Billmayer v. Farmers Union Property & Casualty Co., 146 M 38, 404 P 2d 322.

## 40-4302. Valued policy law.

## Future Improvements

When both parties to a fire insurance policy intend that policy cover property plus added value of work on building to be done subsequently, the policy is "open" or "unvalued," not "valued." Century Corp. v. Phoenix of Hartford, 157 M 16, 482 P 2d 1020.

## Improvements on Real Property

Mobile home that rested on permanent foundation with its wheels removed, had two additional rooms bolted to it and was connected with sewer line was an "improvement on real property" as used in this section. Meccage v. Spartan Ins. Co., 156 M 135, 477 P 2d 115.

A trailer house set up for occupancy and connected to a cesspool, a light plant and oil and propane tanks, was an improvement on real property within the meaning of this section. Staggars v. United States Fidelity & Guaranty Co., 159 M 254, 496 P 2d 1161.

## Partial Payment

Where valued policy fixed valuation of mobile home at \$3,000, insured who signed proof of loss calling for payment of \$1,500 by the insurer and subsequently accepted check in that amount was not barred from claiming additional \$1,500 since claim was a liquidated demand that was not settled by partial payment. Meccage v. Spartan Ins. Co., 156 M 135, 477 P 2d 115.

## Total Loss

Mobile home was wholly destroyed under this section even though some articles were salvaged and frame could be used as farm or ranch trailer, since mobile home's identity and specific character were lost. Meccage v. Spartan Ins. Co., 156 M 135, 477 P 2d 115.

## References

Billmayer v. Farmers Union Property & Casualty Co., 146 M 38, 404 P 2d 322.

40-4303. Personal property—when loss computation to be based on specific valuation. This section applies to policies, except motor vehicle insurance policies, which insure specific listed items of personal property against any loss or damage. If the insurer places specific valuations upon particular items of covered property and bases the premium charge on these valuations, then he shall compute any loss or total damage to the property, when covered, at the stated valuation with no deductions or offsets. An insurer who wishes to vary this requirement and use a different method for computation of loss, the policy and any application for such a policy shall set forth in type of prominent size the actual method of loss computation to be employed.

History: En. 40-4303 by Sec. 1, Ch. 96, L. 1974.

## Title of Act

An act requiring insured personal prop-

erty losses to be computed at the valuations stated in the policy when such valuations affect the premium.

## CHAPTER 44—CASUALTY INSURANCE CONTRACTS

Section 40-4402. Sovereign immunity defense prohibited when liability insured—reduction of award to policy limits.

40-4403. Motor vehicle liability policies to include uninsured motorist coverage—rejection of coverage by insured.

40-4404. Reimbursement for total loss of motor vehicle based on actual replacement value.



- 40-4405. Notice required for cancellation of auto liability insurance.
- 40-4406. Notice to insured of ground for cancellation—commissioner to ensure compliance.
- 40-4407. Reasons for cancellation.
- 40-4408. Notice of cancellation to be mailed 30 days in advance—exception—statement that insurer will specify reason upon request.
- 40-4409. Advance notice required for nonrenewal—exceptions—exemptions.
- 40-4410. Proof of notice.
- 40-4411. Penalty for violation.
- 40-4412. No liability for statements in connection with cancellation or nonrenewal.
- 40-4413. Cancellation or increase of premium rates of professional liability insurance by reason of unfounded claims prohibited.
- 40-4414. Cancellation or increase of premium rates of professional liability insurance—60 days' written notice required.
- 40-4415. Written notice required for cancellation or nonrenewal of fire insurance policies.
- 40-4416. Penalty for cancellation or nonrenewal of fire insurance policies without required notice.

**40-4402. Sovereign immunity defense prohibited when liability insured—reduction of award to policy limits.** Whenever an insurer accepts any premium, money or other consideration from a political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public entity for casualty or liability insurance, neither such insured nor insurer shall raise the defense of sovereign or governmental immunity in any damage action brought against such insured or insurer, and any agreement in the insurance contract permitting the defense of sovereign or governmental immunity is hereby declared void. No attempt shall be made in the trial of an action brought against such political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public entity, to suggest the existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of plaintiff. If the court shall determine that the defendant could have successfully raised the defense of sovereign or governmental immunity, and if the verdict exceeds the limits of the applicable insurance, the court shall reduce the amount of such judgment or award to a sum equal to the applicable limit stated in the policy.

**History:** En. Sec. 1, Ch. 240, L. 1963.

#### **Title of Act**

An act prohibiting the defense of sovereign immunity where public bodies are insured; prohibiting the suggestion of insurance coverage in actions against public bodies, and providing for the reduction of awards to policy limits where sovereign immunity defense could have been successfully raised; repealing all acts and parts of acts in conflict herewith.

#### **Repealing Clause**

Section 2 of Ch. 240, Laws 1963 repealed all acts and parts of acts in conflict therewith.

#### **Cross-References**

Sovereign immunity abolished effective July 1, 1973, 1972 Const., art. II, § 18.

#### **Excessive Liability**

If the amount of liability exceeds the amount of insurance, the policy should be delivered by the claimant to the district judge who will apply the limitation requirement of this section. *Boettger v. Employers Liability Assurance Corp.*, 158 M 258, 490 P 2d 717.

#### **Limitation of Actions**

This section merely removes a defense previously existing rather than creating a new cause of action; therefore, action against county by motorist who alleged he suffered personal injuries in a single vehicle accident due to negligent failure of county to properly maintain and mark a "T" intersection of county roads was subject to three year statute of limitations under section 93-2605, as a personal injury negligence action, rather than the

two year statute of limitations under 93-2607 (1) as an action "upon a liability created by statute." State ex rel. Fallon County v. District Court, Sixteenth Judicial Dist., Fallon County, — M —, 505 P 2d 120.

#### Parties to Action

In cause of action by administratrix of estate of person allegedly shot in the back by policeman in a negligent, reckless,

deliberate, and willful manner, the city was not a proper party. The liability of the police officers in tort must first be determined. If liability is established and insurance exists, then the insurer becomes liable under the policy; should liability be denied, a suit is required and both the insured and insurer would be proper parties. Boettger v. Employers Liability Assurance Corp., 158 M 258, 490 P 2d 717.

**40-4403. Motor vehicle liability policies to include uninsured motorist coverage—rejection of coverage by insured.** No automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle, shall be delivered or issued for delivery in this state, with respect to any motor vehicle registered or principally garaged in this state, unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in section 53-422, under provisions filed with and approved by the insurance commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; provided, that the named insured shall have the right to reject such coverage; and, provided further, that unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with the policy previously issued to him by the same insurer.

**History:** En. Sec. 1, Ch. 31, L. 1967.

#### Title of Act

An act relating to automobile liability insurance policies; requiring such policies to contain uninsured motorist provision; permitting rejection of such coverage at the option of the insured; providing for an effective date.

#### Effective Date

Section 2 of Ch. 31, Laws 1967 read "This act is effective January 1, 1968."

#### Recovery from Primary Insurer

Recovery from primary insurer under uninsured motorist coverage, though applied against the total judgment, does not

reduce the amount of coverage provided by secondary insurer. Sullivan v. Doe, 159 M 50, 495 P 2d 193.

#### Workmen's Compensation

Since uninsured motorist coverage is intended to place the injured policyholder in the same position he would have been if the uninsured motorist had liability insurance, the amount of plaintiff's recovery from uninsured motorist coverage cannot be reduced by any workmen's compensation benefits received by him, and the insurance commissioner had no authority to approve a policy providing for such reduction. Sullivan v. Doe, 159 M 50, 495 P 2d 193.

**40-4404. Reimbursement for total loss of motor vehicle based on actual replacement value.** Each automobile insurance policy issued to residents of this state which provides that reimbursement for total loss of a motor vehicle shall be based on a "book" value rather than on the actual replacement value is void as to such provision and reimbursement shall be made for actual replacement value.

**History:** En. Sec. 1, Ch. 182, L. 1969.

#### Title of Act

An act to provide that motor vehicle

insurance must provide that reimbursement for a total loss of the vehicle be based on the actual replacement value of the vehicle and not on a book value.

**40-4405. Notice required for cancellation of auto liability insurance.** Notwithstanding any other provision of this code, no cancellation by an insurer of an auto liability insurance policy shall be effective prior to the mailing or delivery to the named insured at the address shown in the policy, of a written notice of the cancellation stating when, not less than thirty (30) days after the date of such mailing or delivery, the date the cancellation shall become effective.

History: En. Sec. 1, Ch. 262, L. 1971.

**Title of Act**

An act to establish a law concerning cancellation of automobile liability insurance policies.

**40-4406. Notice to insured of ground for cancellation—commissioner to ensure compliance.** Whenever an insurer gives notice of cancellation of an automobile liability policy, upon request of the insured, the insurer, within fifteen (15) days of receipt of the request, shall furnish to the insured a statement setting forth the ground or grounds upon which the notice of cancellation is based. If the insurer fails to comply with the provisions of this section, the insured may apply to the commissioner for a certificate of the facts or information desired. The commissioner shall exercise any power conferred upon him by law as may be necessary to ensure compliance with this section.

History: En. Sec. 2, Ch. 262, L. 1971.

**40-4407. Reasons for cancellation.** (1) A notice of cancellation of a policy shall be effective only if it is based on one or more of the following reasons:

- (a) Nonpayment of premium; or
- (b) The driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the one hundred eighty (180) days immediately preceding its effective date.

(2) This section shall not apply to any policy or coverage which has been in effect less than sixty (60) days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy.

(3) Modification of automobile physical damage coverage by the inclusion of a deductible not exceeding one hundred dollars (\$100) shall not be deemed a cancellation of the coverage or of the policy.

(4) This section shall not apply to nonrenewal.

History: En. Sec. 3, Ch. 262, L. 1971.

**40-4408. Notice of cancellation to be mailed 30 days in advance—exception—statement that insurer will specify reason upon request.** No notice of cancellation of a policy to which section 3 [40-4407] applies shall be effective unless mailed or delivered by the insurer to the named insured at least thirty (30) days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium, at least ten (10) days' notice of cancellation accompanied by the reason



therefor shall be given. Unless the reason accompanies or is included in the notice of cancellation, the notice of cancellation shall state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than fifteen (15) days prior to the effective date of cancellation, the insurer will specify the reason for such cancellation.

This section shall not apply to nonrenewal.

History: En. Sec. 4, Ch. 262, L. 1971.

**40-4409. Advance notice required for nonrenewal—exceptions—exceptions.** No insurer shall fail to renew a policy unless it shall mail or deliver to the named insured, at the address shown in the policy, at least thirty (30) days' advance notice of its intention not to renew. Such notice shall contain or be accompanied by a statement that upon written request made not later than one (1) month following the termination date of the policy of the named insured mailed or delivered to the insurer, the insurer will notify the insured in writing, within fifteen (15) days of his request, the reason or reasons for such nonrenewal; provided, however, that notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other replacement or succeeding automobile liability insurance policy procured by the insured, with respect to any automobile designated in both policies. This section shall not apply where the named insured has failed to discharge when due any of his obligations in connection with the payment of premiums for the policy, or the renewal thereof, or any installment payments therefor, whether payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit. This section shall not apply in any of the following cases:

(a) If the insurer has manifested its willingness to renew.

(b) In case of nonpayment of premium; provided that, notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other insurance policy with respect to any automobile designated in both policies.

(c) If the insured's agent or broker has secured other coverage acceptable to the insured at least twenty (20) days prior to the anniversary date of the policy or termination of the policy period.

Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

History: En. Sec. 5, Ch. 262, L. 1971.

**40-4410. Proof of notice.** Proof of mailing of notice of cancellation, or of intention not to renew or of reasons for cancellation, to the named insured at the address shown in the policy or to the named insured's latest known address, shall be sufficient proof of notice.

History: En. Sec. 6, Ch. 262, L. 1971.

**40-4411. Penalty for violation.** Any insurer willfully violating any provisions of section 4 [40-4408] is guilty of a misdemeanor and is pun-

ishable by a fine of not exceeding five hundred dollars (\$500) for each violation thereof.

History: En. Sec. 7, Ch. 262, L. 1971.

**40-4412. No liability for statements in connection with cancellation or nonrenewal.** There shall be no liability on the part of, and no cause of action of any nature shall arise against, the insurance commissioner or against any insurer, its authorized representative, its agents, its employees or any firm, person, or corporation furnishing to the insurer information as to reasons for cancellation or nonrenewal, for any statement made by any of them in any written notice of cancellation or nonrenewal, or for statements made or evidence submitted at any hearings conducted in connection therewith.

History: En. Sec. 8, Ch. 262, L. 1971.

**40-4413. Cancellation or increase of premium rates of professional liability insurance by reason of unfounded claims prohibited.** Whenever an action for damages is filed against, or a claim or demand for damages is made to an insurer of, a physician and surgeon, dentist, registered nurse, nursing home administrator, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, pharmacist, optometrist or veterinarian, duly licensed as such under the laws of this state, or against a licensed hospital or long-term care facility as the employer of any such person, in an action, claim or demand for error, omission, professional negligence, or performance of services without consent, and such action, claim or demand is later determined to be unfounded and no payment is made by the insurer to the claimant on behalf of such licensee or licensed hospital or long-term care facility or is finally determined to establish nonliability to plaintiff by such licensee or licensed hospital or long-term care facility, the fact of such litigation, claim or demand shall not be a ground for cancellation nor for any increase in insurance premium rates of the professional liability insurance during the term of the policy.

History: En. Sec. 1, Ch. 210, L. 1971;  
amd. Sec. 1, Ch. 303, L. 1973.

lawsuits that are determined to be unfounded or where nonliability is established.

#### Title of Act

An act to prohibit insurers from canceling a professional liability insurance policy or increasing the premium rates thereon because of claims, demands or

#### Amendments

The 1973 amendment extended this section to nursing home administrators and long-term care facilities.

**40-4414. Cancellation or increase of premium rates of professional liability insurance—60 days' written notice required.** Any insurer who insures a physician and surgeon, dentist, registered nurse, nursing home administrator, registered physical therapist, podiatrist, licensed psychologist, osteopath, chiropractor, pharmacist, optometrist, or veterinarian, duly licensed as such under the laws of this state, or a licensed hospital or long-term care facility as the employer of any such person against liability for error, omission, professional negligence, or performance of services without consent, shall not cancel the policy so insuring such person or increase the premium rates thereon without first providing the

insured sixty (60) days written notice of the insurer's intention to cancel the policy or increase the premium rates.

History: En. Sec. 1, Ch. 14, L. 1971; amd. Sec. 2, Ch. 303, L. 1973.

#### Title of Act

An act to prohibit insurers from canceling a professional liability insurance policy or increasing the premium rates thereon without first providing the in-

sured sixty (60) days notice in writing prior to such cancellation or increase in premium rate.

#### Amendments

The 1973 amendment extended this section to nursing home administrators and long-term care facilities.

**40-4415. Written notice required for cancellation or nonrenewal of fire insurance policies.** No insurer shall cancel or refuse to renew any policy providing fire coverage on any home occupied by the insured as a domicile without first giving to the insured thirty (30) days' notice in writing.

History: En. Sec. 1, Ch. 374, L. 1971.

#### Title of Act

An act to require thirty day notice of

cancellation or nonrenewal of fire insurance policies and providing a penalty for violation under section 40-2617, R. C. M., 1947.

**40-4416. Penalty for cancellation or nonrenewal of fire insurance policies without required notice.** Violation of this section is punishable under section 40-2617, R. C. M., 1947 (general penalty).

History: En. Sec. 2, Ch. 374, L. 1971.

### CHAPTER 47—ORGANIZATION AND CORPORATE PROCEDURES OF STOCK AND MUTUAL INSURERS

Section 40-4705. Incorporation.

40-4745. Mergers and consolidations of stock insurers.

40-4751. Equity securities of domestic stock insurance company—statement of ownership.

40-4752. Equity securities of domestic stock insurance company—inside trading—profit inures to company—limitation of action to recover.

40-4753. Short sales of equity securities prohibited—time for delivery after sale.

40-4754. Exemptions—securities held in an investment account—primary or secondary market.

40-4755. Exemptions—arbitrage transactions.

40-4756. "Equity security" defined.

40-4757. Exemptions—registered securities—holding by less than one hundred persons.

40-4758. Rules and regulations of commissioner—classifications—effect.

**40-4705. Incorporation.** (1) This section applies to stock and mutual insurers hereafter incorporated in this state.

(2) Incorporators. Five (5) or more individuals, none of whom are less than eighteen (18) years of age, may incorporate a stock insurer; ten (10) or more of such individuals may incorporate a mutual insurer. At least a majority of the incorporators shall be citizens of the United States. At least a majority of the incorporators shall be residents of this state.

(3) Articles of incorporation. The incorporators shall execute articles of incorporation in quadruplicate and acknowledge their execution thereof in the same manner as provided by law for the acknowledgment of deeds. The articles of incorporation shall state the purpose for which the corporation is formed and shall show:

(a) to (c) \* \* \* [Same as parent volume.]



(d) If a stock corporation, its authorized capital stock, the number of shares of common stock into which divided, the par value of each such share, which par value shall be at least one dollar (\$1). Shares without par value, or other than one (1) class of voting common stock, shall not be authorized. The articles of incorporation may limit or deny present or future stockholders pre-emptive or preferential rights to acquire additional issues of the stock, or bonds, debentures or other obligations convertible into stock, of the corporation, subject to the laws of Montana fixing the required representation and proportion of outstanding capital stock required to be represented and voted, for specified action, at any and all corporate meetings, elections, votes or consent proceedings.

(e) to (k). \* \* \* [Same as parent volume.]

**History:** En. Sec. 422, Ch. 286, L. 1959; amd. Sec. 7, Ch. 423, L. 1971; amd. Sec. 18, Ch. 100, L. 1973.

specified in the first sentence of subsection (2) from 21 to 18 years.

The 1973 amendment deleted "constitution and" before "laws of Montana" in the third sentence of subdivision (3)(d).

#### Amendments

The 1971 amendment reduced the age

### 40-4743. Mutualization of stock insurers.

#### Compiler's Notes

Section 15-1905, referred to in subd. (e) of subsection (2) of this section in the

parent volume, was repealed by Sec. 143, Ch. 300, Laws 1967.

**40-4745. Mergers and consolidations of stock insurers.** (1) A domestic stock insurer may merge or consolidate with one or more domestic or foreign stock corporations authorized to transact business in this state and by complying with the applicable provisions of the statutes of this state governing the merger or consolidation of stock corporations formed for profit, but subject to subsections (2) and (3) below.

(2) to (6) \* \* \* [Same as parent volume.]

**History:** En. Sec. 462, Ch. 286, L. 1959; amd. Sec. 1, Ch. 151, L. 1971.

minor changes in phraseology and punctuation.

#### Amendments

The 1971 amendment substituted "corporations authorized to transact business" for "insurers authorized to transact insurance" in subsection (1); and made

#### Effective Date

Section 2 of Ch. 151, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

**40-4751. Equity securities of domestic stock insurance company—statement of ownership.** Every person who is directly or indirectly the beneficial owner of more than ten per cent (10%) of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file with the commissioner of insurance within ten (10) days after he becomes such beneficial owner, director or officer, a statement in such form as the commissioner may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within ten (10) days after the close of each calendar month thereafter. If there has been a change in such ownership during such month, such person shall file with the commissioner a statement, in such form as the commissioner may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

**History:** En. Sec. 1, Ch. 159, L. 1965. domestic stock insurance company equity securities.

**Title of Act**

An act relating to insider trading of

**40-4752. Equity securities of domestic stock insurance company—inside trading—profit inures to company—limitation of action to recover.** For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director or officer by reason of his relationship to such company, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such company within any period of less than six (6) months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six (6) months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company, or by the owner of any security of the company in the name and in behalf of the company if the company shall fail or refuse to bring such suit within sixty (60) days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two (2) years after the date such profit was realized. This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the commissioner by rules and regulations may exempt as not comprehended within the purpose of this section.

**History:** En. Sec. 2, Ch. 159, L. 1965.

**40-4753. Short sales of equity securities prohibited—time for delivery after sale.** It shall be unlawful for any such beneficial owner, director or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or his principal (i) does not own the security sold, or (ii) if owning the security, does not deliver it against such sale within twenty (20) days thereafter, or does not within five (5) days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this section if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

**History:** En. Sec. 3, Ch. 159, L. 1965.

**40-4754. Exemptions—securities held in an investment account—primary or secondary market.** The provisions of section 2 [40-4752] of this act shall not apply to any purchase and sale, or sale and purchase, and the provisions of section 3 [40-4753] of this act shall not apply to any sale, of an equity security of a domestic stock insurance company not then or theretofore held by him in an investment account, by a broker-dealer in the ordinary course of his business and incident to the estab-

lishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security. The commissioner may, by such rules and regulations as he deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

History: En. Sec. 4, Ch. 159, L. 1965.

**40-4755. Exemptions—arbitrage transactions.** The provisions of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the commissioner may adopt in order to carry out the purposes of this act.

History: En. Sec. 5, Ch. 159, L. 1965.

**40-4756. "Equity security" defined.** The term "equity security" when used in this act means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as he may prescribe in the public interest or for the protection of investors, to treat as an equity security.

History: En. Sec. 6, Ch. 159, L. 1965.

**40-4757. Exemptions—registered securities—holding by less than one hundred persons.** The provisions of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act shall not apply to equity securities of a domestic stock insurance company if (a) such securities shall be registered, or shall be required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934, as amended, or if (b) such domestic stock insurance company shall not have any class of its equity securities held of record by one hundred (100) or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act except for the provisions of this subsection (b).

History: En. Sec. 7, Ch. 159, L. 1965.

**40-4758. Rules and regulations of commissioner—classifications—effect.** The commissioner may make such rules and regulations as may be necessary for the execution of the functions vested in him by sections 1 through 7 [40-4751 to 40-4757] of this act, and may for such purpose classify domestic stock insurance companies, securities, and other persons or matters within his jurisdiction. No provision of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the commissioner notwithstanding that such rule



or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

History: En. Sec. 8, Ch. 159, L. 1965.

## CHAPTER 48—FARM MUTUAL INSURERS

Section 40-4804. Limit of risk.

40-4807. Who may form a farm mutual insurer.

### 40-4801. Scope of chapter—provisions exclusive.

#### Compiler's Notes

Sections 40-1501 to 40-1517 and 40-1601 to 40-1625, referred to in subdivisions (1)

(a) and (1)(b) of this section in the parent volume, were repealed by Sec. 673, Ch. 286, Laws 1959.

**40-4804. Limit of risk.** (1) The maximum amount of insurance which an insurer shall retain on a single risk, after deduction of applicable reinsurance, shall not exceed ten per cent (10%) of the admitted assets of the insurer or fifteen thousand dollars (\$15,000), whichever is the larger amount.

(2). \* \* \* [Same as parent volume.]

History: En. Sec. 471, Ch. 286, L. 1959; amd. Sec. 1, Ch. 259, L. 1967.

#### Amendments

The 1967 amendment substituted "fifteen thousand dollars (\$15,000)" for "five thousand dollars" in subsection (1).

**40-4807. Who may form a farm mutual insurer.** (1) One hundred (100) or more individuals residing in this state, each of whom is eighteen (18) years of age or more, who collectively own farm property as referred to in section 40-4803 (1) (a) of this chapter valued at not less than five hundred thousand dollars (\$500,000) which they desire to insure, and each of whom owns farm lands or ranch lands situated in this state valued at not less than five thousand dollars (\$5,000), may incorporate a state mutual insurer.

(2) Twenty-five (25) or more individuals residing in this state, each of whom is eighteen (18) years or more of age, each of whom owns farm land or ranch land valued at five thousand dollars (\$5,000) or more in the county wherein is to be located the principal office of the proposed insurer, or in any county in this state contiguous with such county, and who collectively own in such counties farm property referred to in section 40-4803 (1) (a) of this chapter valued at not less than one hundred twenty-five thousand dollars (\$125,000) which they desire to insure, may incorporate a county mutual insurer.

History: En. Sec. 474, Ch. 286, L. 1959; amd. Sec. 8, Ch. 423, L. 1971.

#### Amendments

The 1971 amendment reduced the minimum age specified in each of the two subsections from 21 to 18 years.

## CHAPTER 49—BENEVOLENT ASSOCIATIONS

Section 40-4917. Other provisions applicable.

40-4918. Annual license.

**40-4917. Other provisions applicable.** In addition to the provisions contained in this chapter, other chapters and provisions of this title shall apply to benevolent associations, to the extent applicable, as follows:

(1) Chapter 26 (scope of code).

(2) Chapter 27 (the commissioner of insurance), except section 40-2726 fees and licenses.

(3) to (9) \* \* \* [Same as parent volume.]

History: En. Sec. 537, Ch. 286, L. 1959;  
amd. Sec. 1, Ch. 297, L. 1971.

#### Amendments

The 1971 amendment added the exception to subdivision (2).

**40-4918. Annual license.** Associations which are now authorized to transact business in this state may continue such business until the first day of June next succeeding the effective date of this section. The authority of such association may thereafter be renewed annually, but in all cases to terminate on the first day of the succeeding June. However, a license so issued shall continue in full force and effect until the new license be issued or specifically refused. For each such license or renewal the association shall pay the commissioner twenty-five dollars (\$25). A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a benevolent association within the meaning of this chapter.

History: En. 40-4918 by Sec. 2, Ch. 297,  
L. 1971.

an annual license for benevolent associations and providing an effective date.

#### Title of Act

An act to amend section 40-4917, R. C. M. 1947, exempting benevolent associations from licenses and fees and to add a new section, numbered 40-4918 requiring

#### Effective Date

Section 3 of Ch. 297, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 11, 1971.

## CHAPTER 51—REHABILITATION AND LIQUIDATION

### 40-5101. Definitions.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have adopted the Uniform Insurers Liquidation

Act: Alaska, Arizona, Arkansas, Florida, Idaho, Oklahoma, Tennessee, West Virginia, Wisconsin and Wyoming.

## CHAPTER 53—FRATERNAL BENEFIT SOCIETIES

Section 40-5321. Qualifications for membership.

40-5324. Benefits on lives of children.

**40-5321. Qualifications for membership.** A society may admit to benefit membership any person not less than fifteen (15) years of age, nearest birthday, who has furnished evidence of insurability acceptable to the society. Any such member who shall apply for additional benefits more than six (6) months after becoming a benefit member shall furnish additional evidence of insurability acceptable to the society.

Any person admitted prior to attaining the full age of eighteen (18) years shall be bound by the terms of the application and certificate and by all the laws and rules of the society and shall be entitled to all the rights and privileges of membership therein to the same extent as though the age of majority had been attained at the time of application. A society may also admit general or social members who shall have no voice or vote in the management of its insurance affairs.

History: En. Sec. 634, Ch. 286, L. 1959;      Amendments  
amd. Sec. 9, Ch. 423, L. 1971.

The 1971 amendment reduced the age specified near the beginning of the second paragraph from 21 to 18 years.

**40-5324. Benefits on lives of children.** (1) A society may provide for benefits on the lives of children under the minimum age for adult membership but not greater than eighteen (18) years of age at time of application therefor, upon the application of some adult person, as its laws or rules may provide, which benefits shall be in accordance with the provisions of section 40-5323 of this chapter. A society may, at its option, organize and operate branches for such children. Membership and initiation in local lodges shall not be required of such children, nor shall they have a voice in the management of the society.

(2). \* \* \* [Same as parent volume.]

History: En. Sec. 637, Ch. 286, L. 1959;      Amendments  
amd. Sec. 16, Ch. 94, L. 1973.

The 1973 amendment reduced the age specified in the first sentence of subsection (1) from 21 to 18 years.

#### CHAPTER 54—EXTENDED HEALTH INSURANCE FOR OLDER PERSONS

- Section 40-5401. Purpose of act.  
40-5402. Definition of terms.  
40-5403. Joint underwriting authorized—reduction for other coverage—group policies—availability of coverage.  
40-5404. Agents authorized to write coverage.  
40-5405. Corporate powers of association—examination of books.  
40-5406. Policy forms to be approved—procedure—duplication of federal benefits—reports and information furnished by association.  
40-5407. Filing with commissioner by association—deceptive practices prohibited.  
40-5408. Exemption of association from other laws.

**40-5401. Purpose of act.** It is the purpose of this act to provide a means of more adequately meeting the needs of persons who are 65 years of age or older and their spouses for insurance coverage against financial loss from accident or disease through the combined resources and experience of a number of insurers; to make possible the fullest extension of such coverage by encouraging insurers to combine their resources and experience and to exercise their collective efforts in the development and offering of policies of such insurance to all applicants; and to regulate the joint activities herein authorized in accordance with the intent of Congress as expressed in the act of Congress of March 9, 1945 (Public Law 15, 79th Congress), as amended.

History: En. Sec. 1, Ch. 61, L. 1965.

##### Title of Act

An act relating to group accident and sickness insurance for persons 65 years of

age or older, and their spouses; providing regulation of such insurance by the commissioner of insurance; and providing an effective date.

**40-5402. Definition of terms.** Wherever used in this act, the following terms shall have the meanings hereinafter set forth or indicated, unless the context otherwise requires:

(a) "Association" means a voluntary unincorporated association



formed for the purpose of enabling co-operative action to provide disability insurance in accordance with this act in this or any other state having legislation enabling the issuance of insurance of the type provided in this act.

(b) "Insurer" means any insurance company which is authorized to transact disability insurance in this state.

(c) "Extended health insurance" means hospital, surgical and medical expense insurance provided by a policy issued as provided by this act.

History: En. Sec. 2, Ch. 61, L. 1965.

40-5403. Joint underwriting authorized—reduction for other coverage—group policies—availability of coverage. Notwithstanding any other provision of this code or any other law which may be inconsistent herewith, any insurer may join with one or more other insurers, to plan, develop, underwrite, and offer and provide to any person who is 65 years of age or older and to the spouse of such person, extended health insurance against financial loss from accident or disease, or both. Such insurance may be offered, issued and administered jointly by two or more insurers by a group policy issued to a policyholder through an association formed for the purpose of offering, selling, issuing and administering such insurance. The policyholder may be an association, a trustee, or any other person. Any such policy may provide, among other things, that the benefits payable thereunder are subject to reduction if the individual insured has any other coverage providing hospital, surgical or medical benefits whether on an indemnity basis or a provision of service basis resulting in such insured being eligible for more than 100 per cent of covered expenses which he is required to pay, and any insurer issuing individual policies providing extended hospital, surgical or medical benefits to persons 65 years of age and older and their spouses may also use such a policy provision. A master group policy issued to an association or to a trustee or any person appointed by an association for the purpose of providing the insurance described in this act shall be another form of group disability insurance.

Any form of policy approved by the commissioner for an association shall be offered throughout Montana to all persons 65 and older and their spouses, and the coverage of any person insured under such a form of policy shall not be cancellable except for nonpayment of premiums unless the coverage of all persons insured under such form of policy is also canceled.

History: En. Sec. 3, Ch. 61, L. 1965.

40-5404. Agents authorized to write coverage. Notwithstanding the provisions of section 40-3316, any person licensed to transact disability insurance as an insurance agent, may transact extended health insurance and may be paid a commission thereon.

History: En. Sec. 4, Ch. 61, L. 1965.

40-5405. Corporate powers of association—examination of books. Any association formed for the purposes of this act, may hold title to property, may enter into contracts, and may limit the liability of its members to

their respective pro rata shares of the liability of such association. Any such association may sue and be sued in its associate name and for such purpose only shall be treated as a domestic corporation. Service of process against such association, made upon a managing agent, any member thereof or any agent authorized by appointment to receive service of process, shall have the same force and effect as if such service had been made upon all members of the association. Such association's books and records shall also be subject to examination under the provisions of sections 40-2713 to 40-2719, inclusive, either separately or concurrently with examination of any of its member insurers.

History: En. Sec. 5, Ch. 61, L. 1965.

**40-5406. Policy forms to be approved—procedure—duplication of federal benefits—reports and information furnished by association.** The forms of the policies, applications, certificates or other evidence of insurance coverage and applicable premium rates relating thereto shall be filed with the commissioner. No such policy, contract, certificate or other evidence of insurance, application or other form shall be sold, issued or used and no endorsement shall be attached to or printed or stamped thereon unless the form thereof shall have been approved by the commissioner or 30 days shall have expired after such filing without written notice from the commissioner of disapproval thereof. The commissioner shall disapprove the forms for such insurance if he finds that they are unjust, unfair, inequitable, misleading or deceptive or that the rates are by reasonable assumptions excessive in relation to the benefits provided. In determining whether such rates by reasonable assumptions are excessive in relation to the benefits provided, the commissioner shall give due consideration to past and prospective claim experience, within and outside this state, and to fluctuations in such claim experience, to a reasonable risk charge, to contribution to surplus and contingency funds, to past and prospective expenses, both within and outside this state, and to all other relevant factors within and outside this state including any differing operating methods of the insurers joining in the issue of the policy. In exercising the powers conferred upon him by this act, the commissioner shall not be bound by any other requirement of this code with respect to standard provisions to be included in disability policies or forms.

The commissioner may, after hearing upon written notice, withdraw an approval previously given, upon such grounds as in his opinion would authorize disapproval upon original submission thereof. Any such withdrawal of approval after hearing shall be by notice in writing specifying the ground thereof and shall be effective at the expiration of such period, not less than 90 days after the giving of notice of withdrawal, as the commissioner shall in such notice prescribe.

If and when a program of hospital, surgical and medical benefits is enacted by the federal government or the state of Montana, the extended health insurance benefits provided by policies issued under this act shall be adjusted to avoid any duplication of benefits offered by the federal or state programs and the premium rates applicable thereto shall be adjusted to conform with the adjusted benefits.

The association shall submit an annual report to the insurance commissioner which shall become public information and shall provide information as to the number of persons insured, the names of the insurers participating in the association with respect to insurance offered under this act and the calendar year experience applicable to such insurance offered under this act, including premiums earned, claims paid during the calendar year, the amount of claims reserve established, administrative expenses, commissions, promotional expenses, taxes, contingency reserve, other expenses, and profit and loss for the year. The commissioner shall require the association to provide any and all information concerning the operations of the association deemed relevant by him for inclusion in the report.

History: En. Sec. 6, Ch. 61, L. 1965.

**40-5407. Filing with commissioner by association—deceptive practices prohibited.** The articles of association of any association formed in accordance with this act, all amendments and supplements thereto, a designation in writing of a resident of this state as agent for the service of process, and a list of insurers who are members of the association and all supplements thereto shall be filed with the commissioner.

The name of any association or any advertising or promotional material used in connection with extended health insurance to be sold, offered, or issued, pursuant to this act shall not be such as to mislead or deceive the public.

History: En. Sec. 7, Ch. 61, L. 1965.

**40-5408. Exemption of association from other laws.** No act done, action taken or agreement made pursuant to the authority conferred by this act shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this state heretofore or hereafter enacted which does not specifically refer to insurance.

History: En. Sec. 8, Ch. 61, L. 1965.

**Effective Date**

Section 9 of Ch. 61, Laws 1965 pro-

vided the act should be in effect from and after its passage and approval. Approved February 25, 1965.

## CHAPTER 55—INSURANCE HOLDING COMPANIES

- Section 40-5501. Short title.  
 40-5502. General definitions.  
 40-5503. Restrictions on transfers of stock.  
 40-5504. Exemptions from prohibitions on stock transfers.  
 40-5505. Examination of foreign and domestic holding companies—frequency of examination—submission of annual reports.  
 40-5506. Acquisition and transfer of stock—submission of petition—hearings—denial of petition.  
 40-5507. Violations of act—penalty.  
 40-5508. Filing of false information—penalty.  
 40-5509. Definitions.  
 40-5510. Subsidiaries of insurers.  
 40-5511. Acquisition of control of or merger with domestic insurer.  
 40-5512. Registration of insurers.  
 40-5513. Standards.  
 40-5514. Examination.  
 40-5515. Confidential treatment.  
 40-5516. Rules and regulations.



- 40-5517. Injunctions—prohibitions against voting securities—sequestration of voting securities.
- 40-5518. Criminal proceedings.
- 40-5519. Receivership.
- 40-5520. Revocation, suspension, or nonrenewal of insurer's license.
- 40-5521. Judicial review—mandamus.
- 40-5522. Conflict with other laws.

**40-5501. Short title.** This act may be cited as the "Montana Insurance Holding Act."

**History:** En. Sec. 1, Ch. 269, L. 1967.

#### Compiler's Notes

The title of Chapter 64, Laws of 1971, referred to a repealer of sections 40-5501 to 40-5508. However, no repealer was contained in the body of the act.

#### Title of Act

An act to provide for control and regulation of the affairs of domestic and foreign insurance holding companies; prescribe rules and regulations governing acquisition and disposal of stock of insur-

ance holding companies; prescribe rules and regulations regarding acquisition and disposal of stock of insurance companies by insurance holding companies; exempting certain acquisitions and disposals of stock from the provisions of the act; subjecting domestic insurers coming within the purview of the act to examination by the insurance department; providing for application to be made to the insurance commissioner to approve certain transactions; providing for judicial review of orders; defining terms; and providing penalties.

**40-5502. General definitions.** Unless context requires otherwise, in this act:

(1) "Commissioner" means commissioner of insurance of the state of Montana.

(2) "Department" means the department of insurance of the state of Montana.

(3) "Company" means all corporations, joint stock companies, trusts, associations, partnerships, or individuals engaged in the business of insurance as principals.

(4) "Insurance Holding Company" means any company:

(a) which directly or indirectly owns, controls or holds with power to vote fifteen per cent (15%) or more of the voting stock of one or more insurance companies; or

(b) which controls the election of the directors of one or more insurance companies; or

(c) for the benefit of whose stockholders or members, fifteen per cent (15%) or more of the voting stock of one or more insurance companies is held by one or more trustees; and for the purposes of this section, any successor to any company from the date as of which such predecessor company became an insurance holding company.

(5) "Affiliate" means:

(a) any company, fifteen per cent (15%) or more of whose voting stock is owned or controlled by an insurance holding company; or

(b) any company, the election of whose directors is controlled in any manner by an insurance holding company; or

(c) any company, fifteen per cent (15%) or more of whose vote or voting stock is held by trustees for the benefit of the stockholders or members of an insurance holding company.

(6) "Successor" means any company which acquired directly or indirectly from an insurance holding company stock of any insurance company when and if the relationship between such company and in-

insurance holding company is such that the transaction effects no substantial change in the control of the insurance company or beneficial ownership of the stock thereof. The commissioner may, by regulation, further define the word "successor" to the extent necessary to prevent evasion of the purposes of this section.

(7) "Domestic" insurer means one formed under the laws of this state.

(8) "Foreign" insurer means one formed under the laws of any jurisdiction other than this state.

**History:** En. Sec. 2, Ch. 269, L. 1967.

**40-5503. Restrictions on transfers of stock.** Except with prior written approval of the commissioner:

(1) No domestic insurance company shall directly or indirectly transfer fifteen per cent (15%) of its voting stock to a foreign or domestic insurance holding company.

(2) No domestic insurance holding company shall transfer, directly or indirectly, ownership or control of voting stock in any other company to a foreign insurance holding company if, after such acquisition, such foreign insurance holding company will own or control, directly or indirectly, fifteen per cent (15%) or more of the voting stock of the company whose shares it acquires.

(3) No domestic insurance holding company shall, directly or indirectly, transfer more than fifteen per cent (15%) of its authorized and outstanding voting stock to any other corporation, association, partnership or individual.

**History:** En. Sec. 3, Ch. 269, L. 1967.

**40-5504. Exemptions from prohibitions on stock transfers.** The prohibitions of section 3 [40-5503] shall not apply to:

(1) Stock held in a fiduciary capacity except where such stock is held for the benefit of the shareholders of an insurance company or insurance holding company;

(2) Stock accepted in good faith as collateral security by a company other than an insurance holding company for advances made or stock acquired in good faith; provided, such stock shall be sold or otherwise disposed of within two (2) years from the date of its acquisition unless its further holding is approved by the commissioner;

(3) Stock acquired as a consequence of a merger or consolidation of one insurance company with another, or the conversion of one insurance company into another, or the sale of assets of one insurance company to another where the stock acquired does not represent a larger percentage interest in the stock of the insurance company in which acquired than was held prior to such consolidation, merger, conversion, or sale by the insurance holding company in the insurance company consolidated, merged, or converted, or whose assets were the subject of the sale; or

(4) Any stock acquired in connection with the underwriting of the issue of such stock and which is held only for such period of time as will

permit the sale thereof on a reasonable basis as regulated by the Securities Act of Montana.

**History:** En. Sec. 4, Ch. 269, L. 1967.

**40-5505. Examination of foreign and domestic holding companies—frequency of examination—submission of annual reports.** Every domestic insurance company, fifteen per cent (15%) of whose stock is held by a domestic or foreign insurance holding company and every domestic insurance holding company as defined by this act, shall be subject to examination by the insurance department of the state of Montana as often as the commissioner deems advisable, but not less frequently than once each year; and shall submit to the commissioner an annual report on forms prescribed by the commissioner.

**History:** En. Sec. 5, Ch. 269, L. 1967.

**40-5506. Acquisition and transfer of stock—submission of petition—hearings—denial of petition.** Any company or insurance holding company desiring to acquire or transfer stock as regulated by section 3 [40-5503] shall submit a petition, in writing, to the commissioner seeking approval of such acquisition or transfer, on such forms as the commissioner may from time to time prescribe and with such information as the commissioner by rule or regulation shall require. Upon receipt of a petition, the commissioner shall grant approval or grant a hearing on the request. If, after such hearing it is decided by the commissioner that such transfer or acquisition is not in the best interest of the stockholders, or policyholders, or that competition among insurance companies will be unnecessarily affected, he shall deny such petition. Upon denial of any petition, the courts of the state of Montana, first judicial district, in and for Lewis and Clark county, shall have jurisdiction to hear an appeal from said denial. A trial de novo shall be granted upon such an appeal.

**History:** En. Sec. 6, Ch. 269, L. 1967.

**40-5507. Violations of act—penalty.** Any company which fails to comply with the provisions of this act shall be fined by the commissioner in an amount not to exceed one thousand dollars (\$1,000.00), and the certificate of authority of any domestic insurance company which fails to comply with the provisions of this act shall be revoked by the commissioner, after a hearing held for that purpose.

**History:** En. Sec. 7, Ch. 269, L. 1967.

**40-5508. Filing of false information—penalty.** Any individual who knowingly causes, directly or indirectly, false information to be filed with the commissioner contained in any report required under the provisions of this act, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed five hundred dollars (\$500.00), or by imprisonment in the county jail for not more than six (6) months, or both.

**History:** En. Sec. 8, Ch. 269, L. 1967.



**40-5509. Definitions.** As used in this article, the following terms shall have the respective meanings hereinafter set forth, unless the context shall otherwise require:

(a) **Affiliate.** An “affiliate” of, or person “affiliated” with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(b) **Commissioner.** The term “commissioner” shall mean the insurance commissioner, his deputies, or the insurance department, as appropriate.

(c) **Control.** The term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten per cent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by section 4 [40-5512] (i) that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(d) **Insurance holding company system.** An “insurance holding company system” consists of two (2) or more affiliated persons, one (1) or more of which is an insurer.

(e) **Insurer.** The term “insurer” shall have the same meaning as set forth in section 40-2603, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(f) **Person.** A “person” is an individual, a corporation, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker’s function.

(g) **Securityholder.** A “securityholder” of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

(h) **Subsidiary.** A “subsidiary” of a specified person is an affiliate controlled by such person directly, or indirectly through one (1) or more intermediaries.

(i) **Voting security.** The term “voting security” shall include any security convertible into or evidencing a right to acquire a voting security.

History: En. Sec. 1, Ch. 64, L. 1971.

**Title of Act**

An act to provide for control and regulation of the affairs of insurance holding companies; prescribe rules and regulations governing acquisition and disposal of insurance holding companies; subjecting do-

mestic insurers to examination by the insurance department; providing for application to be made to the insurance commissioner to approve certain transactions; providing for judicial review; defining terms; and providing penalties; repealing sections 40-5501 through 40-5508, R. C. M., 1947.

**40-5510. Subsidiaries of insurers.** (a) Authorization. Any domestic insurer, either by itself or in co-operation with one (1) or more persons, may organize or acquire one (1) or more subsidiaries engaged in the following kinds of business:

(1) Any kind of insurance business authorized by the jurisdiction in which it is incorporated.

(2) Acting as an insurance broker or as an insurance agent for its parent or for any of its parent's insurer subsidiaries.

(3) Investing, reinvesting or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary.

(4) Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services.

(5) Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended.

(6) Rendering investment advice to governments, government agencies, corporations or other organizations or groups.

(7) Rendering other services related to the operations of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal and collection services.

(8) Ownership and management of assets which the parent corporation could itself own or manage.

(9) Acting as administrative agent for a governmental instrumentality which is performing an insurance function.

(10) Financing of insurance premiums, agents and other forms of consumer financing.

(11) Any other business activity determined by the commissioner to be reasonable ancillary to an insurance business.

(12) Owning a corporation or corporations engaged or organized to engage exclusively in one (1) or more of the businesses specified in this section.

(b) Additional investment authority. In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under all other sections of this chapter, a domestic insurer may also:

(1) Invest, in common stock, preferred stock, debt obligations, and other securities of one (1) or more subsidiaries, amounts which do not exceed the lesser of five per cent (5%) of such insurer's assets or fifty

per cent (50%) of such insurer's surplus as regards policyholders, provided that after such investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, there shall be included total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation.

(2) If the insurer's total liabilities, as calculated for national association of insurance commissioners annual statement purposes, are less than ten per cent (10%) of assets, invest any amount in common stock, preferred stock, debt obligations, and other securities of one (1) or more subsidiaries, provided that, after such investment, the insurer's surplus as regards policyholders, considering such investment as if it were a disallowed asset, will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(3) Invest any amount in common stock, preferred stock, debt obligations and other securities of one (1) or more subsidiaries provided that each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in this clause, "the total investment of the insurer" shall include:

(i) Any direct investment by the insurer in an asset.

(ii) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership of such subsidiary.

(4) With the approval of the commissioner, invest any amount in common stock, preferred stock, debt obligations, or other securities of one (1) or more subsidiaries, provided that after such investment, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(5) Invest any amount in the common stock, preferred stock, debt obligations, or other securities of any subsidiary exclusively engaged in holding title to or holding title to and managing or developing real or personal property, if after considering as a disallowed asset so much of the investment as is represented by subsidiary assets which if held directly by the insurer would be considered as a disallowed asset, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, and if following such investment all voting securities of such subsidiary would be owned by the insurer.

(c) Exemption from investment restrictions. Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries



made pursuant to subsection (b) hereof shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in this chapter applicable to such investments of insurers.

(d) Qualification of investment—when determined. Whether any investment pursuant to subsection (b) meets the applicable requirements thereof is to be determined immediately after such investment is made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the date they were made.

(e) Cessation of control. If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three (3) years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after such investment shall have been made, such investment shall have met the requirements for investment under any other section of this chapter, and the insurer has notified the commissioner thereof.

History: En. Sec. 2, Ch. 64, L. 1971.

**40-5511. Acquisition of control of or merger with domestic insurer.**

(a) Filing requirements. No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner hereinafter prescribed. For purposes of this section, a domestic insurer shall include any other person controlling a domestic insurer unless such other person is either directly or through its affiliates primarily engaged in business other than the business of insurance.

(b) Content of statement. The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (a) is to be effected (hereinafter called "acquiring party").

(i) If such person is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten years.

(ii) If such person is not an individual, a report of the nature of its business operations during the past five (5) years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by paragraph (i) of this subsection.

(2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration, provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests.

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement.

(4) Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(5) The number of shares of any security referred to in subsection (a) which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (a), and a statement as to the method by which the fairness of the proposal was arrived at.

(6) The amount of each class of any security referred to in subsection (a) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(7) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (a) in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into.

(8) A description of the purchase of any security referred to in subsection (a) during the twelve (12) calendar months preceding the filing of the statement, by an acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

(9) A description of any recommendations to purchase any security referred to in subsection (a) made during the twelve (12) calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party.

(10) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (a), and (if distributed) of additional soliciting material relating thereto.

(11) The terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in subsection (a) for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

(12) Such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection (a) is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by clauses (1) through (12) shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member or person is a corporation or the person required to file the statement referred to in subsection (a) is a corporation, the commissioner may require that the information called for by clauses (1) through (12) shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten per cent (10%) of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within two (2) business days after the person learns of such change. Such insurer shall send such amendment to its shareholders.

(c) Alternative filing materials. If any offer, request, invitation, agreement or acquisition referred to in subsection (a) is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (a) may utilize such documents in furnishing the information called for by that statement.

(d) Approval by commissioner—hearings. (1) The commissioner shall approve any merger or other acquisition of control referred to in subsection (a) unless, after a public hearing thereon, he finds that:

(i) After the change of control the domestic insurer referred to in subsection (a) would not be able to satisfy the requirements for the is-



suance of a license to write the line or lines of insurance for which it is presently licensed.

(ii) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein.

(iii) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of any remaining securityholders who are unaffiliated with such acquiring party.

(iv) The terms of the offer, request, invitation, agreement or acquisition referred to in subsection (a) are unfair and unreasonable to the securityholders of the insurer.

(v) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest.

(vi) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

(2) The public hearing referred to in clause (1) shall be held within thirty (30) days after the statement required by subsection (a) is filed, and at least twenty (20) days notice thereof shall be given by the commissioner to the person filing the statement. Not less than seven (7) days notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The insurer shall give such notice to its securityholders. The commissioner shall make a determination within thirty (30) days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the district court of this state. All discovery proceedings shall be concluded not later than three (3) days prior to the commencement of the public hearing.

(c) Mailing to shareholders—payment of expenses. All statements, amendments, or other material filed pursuant to subsection (a) or (b), and all notices of public hearings held pursuant to subsection (d), shall be mailed by the insurer to its shareholders within five (5) business days after the insurer has received such statements, amendments, other material, or notices. The expenses of mailing shall be borne by the person making the filing. As security for the payment of such expenses, such person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

(f) Exemptions. The provisions of this section shall not apply to:

(i) Any offers, requests, invitations, agreements or acquisitions by the person referred to in subsection (a) of any voting security referred to in subsection (a) which, immediately prior to the consummation of such offer, request, invitation, agreement or acquisition, was not issued and outstanding.

(ii) Any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt therefrom as (1) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (2) as otherwise not comprehended within the purposes of this section.

(g) Violations. The following shall be violations of this section:

(i) The failure to file any statement, amendment, or other material required to be filed pursuant to subsection (a) or (b).

(ii) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval thereto.

(h) Jurisdiction—consent to service of process. The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this section, and over all actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at his last known address.

History: En. Sec. 3, Ch. 64, L. 1971.

**40-5512. Registration of insurers.** (a) Registration. Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. Any insurer which is subject to registration under this section shall register within sixty (60) days after the effective date of this article or fifteen (15) days after it becomes subject to registration, whichever is later, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

(b) Information and form required. Every insurer subject to registration shall file a registration statement on a form provided by the commissioner, which shall contain current information about:

(i) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer.

(ii) The identity of every member of the insurance holding company system.

(iii) The following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its affiliates:

(1) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates.

(2) Purchases, sales, or exchanges of assets.

(3) Transactions not in the ordinary course of business.

(4) Guaranties or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business.

(5) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles.

(6) Reinsurance agreements covering all or substantially all of one (1) or more lines of insurance of the ceding company.

(iv) All matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

(c) Materiality. No information need be disclosed on the registration statement filed pursuant to section 4 (b) [subdivision (b) of this section] if such information is not material for the purposes of this section. Unless the commissioner by rule, regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, involving one-half ( $\frac{1}{2}$ ) of one per cent (1%) or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section.

(d) Amendments to registration statements. Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within fifteen (15) days after the end of the month in which it learns of each such change or addition, provided, however, that subject to subsection (c) of section 5 [40-5513], each registered insurer shall so report all dividends and other distributions to shareholders within two (2) business days following the declaration thereof.

(e) Termination of registration. The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(f) Consolidated filing. The commissioner may require or allow two (2) or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.



(g) Alternative registration. The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) and to file all information and material required to be filed under this section.

(h) Exemptions. The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule, regulation, or order shall exempt the same from the provisions of this section.

(i) Disclaimer. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

(j) Violations. The failure to file a registration statement or any amendment thereto required by this section within the time specified for such filing shall be a violation of this section.

History: En. Sec. 4, Ch. 64, L. 1971.

**40-5513. Standards.** (a) Transactions with affiliates. Material transactions by registered insurers with their affiliates shall be subject to the following standards:

(1) The terms shall be fair and reasonable.

(2) The books, accounts and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions.

(3) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) Adequacy of surplus. For purposes of this article, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria.

(2) The extent to which the insurer's business is diversified among the several lines of insurance.

(3) The number and size of risks insured in each line of business.

(4) The extent of the geographical dispersion of the insurer's insured risks.

- (5) The nature and extent of the insurer's reinsurance program.
- (6) The quality, diversification, and liquidity of the insurer's investment portfolio.
- (7) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders.
- (8) The surplus as regards policyholders maintained by other comparable insurers.
- (9) The adequacy of the insurer's reserves.

(10) The quality and liquidity of investments in subsidiaries made pursuant to section 3 [40-5511]. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants.

(c) Dividends and other distributions. No insurer subject to registration under section 6 [40-5514] shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty (30) days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment, or the commissioner shall have approved such payment within such thirty (30) day period.

For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve (12) months exceeds the greater of ten per cent (10%) of such insurer's surplus as regards policyholders as of the thirty-first day of December next preceding, or the net gain from operations of such insurer, if such insurer is a life insurer, or the net investment income, if such insurer is not a life insurer, for the twelve (12) month period ending the thirty-first day of December next preceding, but shall not include prorata distributions of any class of the insurer's own securities.

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until the commissioner has approved the payment of such dividend or distribution or the commissioner has not disapproved such payment within the thirty (30) day period referred to above.

**History:** En. Sec. 5, Ch. 64, L. 1971.

**40-5514. Examination.** (a) Power of commissioner. Subject to the limitation contained in this section and in addition to the powers which the commissioner has under sections 40-2713, 40-2714, 40-2715, 40-2716, 40-2717, R. C. M., 1947, relating to the examination of insurers, the commissioner shall also have the power to order any insurer registered under section 4 [40-5512] to produce such records, books, or other information papers in the possession of the insurer or its affiliates as shall be necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the commis-

sioner shall have the power to examine such affiliates to obtain such information.

(b) Purpose and limitation of examination. The commissioner shall exercise his power under subsection (a) above only if the examination of the insurer is inadequate or the interests of the policyholders of such insurer may be adversely affected.

(c) Use of consultants. The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection (a) above. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

(d) Expenses. Each registered insurer producing for examination records, books and papers pursuant to subsection (a) above shall be liable for and shall pay the expense of such examination.

History: En. Sec. 6, Ch. 64, L. 1971.

**40-5515. Confidential treatment.** All information, documents and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 6 [40-5514] and all information reported pursuant to section 4 [40-5512], shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interests of policyholders, shareholders or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he may deem appropriate.

History: En. Sec. 7, Ch. 64, L. 1971.

**40-5516. Rules and regulations.** The commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules, regulations, and orders as shall be necessary to carry out the provisions of this article.

History: En. Sec. 8, Ch. 64, L. 1971.

**40-5517. Injunctions—prohibitions against voting securities—sequestration of voting securities.** (a) Injunctions. Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this article or of any rule, regulation, or order issued by the commissioner hereunder, the commissioner may apply to the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in this state then to the district court for Lewis and Clark county for an order enjoining such insurer or such director, officer, employee or agent thereof from violating or continuing to violate this article or any such rule, regulation or order, and for such other equitable re-



relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

(b) Voting of securities—when prohibited. No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this article or of any rule, regulation or order issued by the commissioner hereunder may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this article or of any rule, regulation or order issued by the commissioner hereunder the insurer or the commissioner may apply to the district court for Lewis and Clark county or to the district court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement or acquisition made in contravention of section 5 [40-5513] or any rule, regulation, or order issued by the commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

(c) Sequestration of voting securities. In any case where a person has acquired or is proposing to acquire any voting securities in violation of this article or any rule, regulation or order issued by the commissioner hereunder, the district court for Lewis and Clark county or the district court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by such person, and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this article. Notwithstanding any other provisions of law, for the purposes of this article the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

**History: En. Sec. 9, Ch. 64, L. 1971.**

**40-5518. Criminal proceedings.** Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this article, the commissioner may cause criminal proceedings to be instituted by the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in the state, then by the district court for Lewis and Clark county against such insurer or the responsible director, officer, employee or agent thereof. Any insurer which willfully violates this article may be fined not more than five thousand dollars (\$5,000). Any individual who willfully violates this article may be fined

not more than five hundred dollars (\$500) or, if such willful violation involves the deliberate perpetration of a fraud upon the commissioner, imprisoned not more than two (2) years or both.

History: En. Sec. 10, Ch. 64, L. 1971.

**40-5519. Receivership.** Whenever it appears to the commissioner that any person has committed a violation of this article which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, then the commissioner may proceed to take possession of the property of such domestic insurer and to conduct the business thereof.

History: En. Sec. 11, Ch. 64, L. 1971.

**40-5520. Revocation, suspension, or nonrenewal of insurer's license.** Whenever it appears to the commissioner that any person has committed a violation of this article which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke or refuse to renew such insurer's license or authority to do business in this state for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

History: En. Sec. 12, Ch. 64, L. 1971.

**40-5521. Judicial review—mandamus.** (a) Any person aggrieved by any act, determination, rule, regulation, or order or any other action of the commissioner pursuant to this article may appeal therefrom to the district court for Lewis and Clark county. The court shall conduct its review without a jury and by trial de novo, except that if all parties, including the commissioner, so stipulate, the review shall be confined to the record. Portions of the record may be introduced by stipulation into evidence in a trial de novo as to those parties so stipulating.

(b) The filing of an appeal pursuant to this section shall stay the application of any such rule, regulation, order or other action of the commissioner to the appealing party unless the court, after giving such party notice and an opportunity to be heard, determines that such a stay would be detrimental to the interests of policyholders, shareholders, creditors or the public.

(c) Any person aggrieved by any failure of the commissioner to act or make a determination required by this article may petition the district court for Lewis and Clark county for a writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make such determination forthwith.

History: En. Sec. 13, Ch. 64, L. 1971.

**40-5522. Conflict with other laws.** All laws and parts of laws of this state inconsistent with this article are hereby superseded with respect to matters covered by this article.

**History:** En. Sec. 14, Ch. 64, L. 1971.

**Separability Clause**

Section 15 of Ch. 64, Laws 1971 read "Separability of provisions. If any provision of this article or the application thereof to any person or circumstance is

held invalid, the invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and for this purpose the provisions of this article are separable."

**CHAPTER 56—WORKMEN'S COMPENSATION INSURANCE  
PREMIUM RATES**

- Section** 40-5601. Declaration of policy—purpose of act.  
 40-5602. Applicability of act.  
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 40-5616. Membership in rating organization required.  
 40-5617. Composition of rating organization.  
 40-5618. Industrial accident board as member of committee on operation of rating organization—other members.

**40-5601. Declaration of policy—purpose of act.** (1) It is declared that the public welfare is served by the making of premium rates for workmen's compensation insurance coverage in concert, and that the review by the state of the rates so made is necessary and desirable in the public interest.

(2) It is the purpose of this act (a) to authorize such rate-making in concert, and the operating of rating organizations thereto;

(b) to establish the general bases and standards for the making of such rates;

(c) to provide for review by the state of such rate-making and the results thereof.

**History:** En. Sec. 1, Ch. 329, L. 1969.

**Title of Act**

An act to establish a policy for the making of premium rates for workmen's compensation insurance issued under plan Number 2 of the Workmen's Compensation Act, sections 92-1001 through 92-1012, R. C. M. 1947, and plan Number 3 of the Workmen's Compensation Act, sections 92-1101 through 92-1123, R. C. M. 1947, and to insurance or guaranty by surety insurers of the obligations of employers under the Workmen's Compensation Act; providing for rate-making factors, rate standards and uniformity of rates, and

providing for rate filing, exemptions from filing and effective date of filing; providing for disapproval of rate filing by the state auditor, ex officio commissioner of insurance; providing for disapproval of filing after consideration by the commissioner of insurance; providing for the scope of disapproval power by the commissioner of insurance; providing for adherence to filing; relating to excess rates, deviations from such rates and defining the power of the commissioner of insurance relative thereto; requiring rating organization membership and application of the laws of Montana as to certain powers of the commissioner of insurance and to



certain public employment; repealing all acts and parts of acts in conflict herewith; providing for filings by rating bureaus with the commissioner of insurance, including workmen's compensation insurance; requiring membership in a rating organization of all insurers writing workmen's compensation insurance and requiring membership of the Montana state industrial accident board, without election, on any committee of a rating organization of which it is a member; providing for application to the commissioner of insurance for percentage increase or decrease of premiums and providing procedure therefor; amending section 92-1101, R. C. M. 1947, relating to payment of premiums

by employers under plan Number 3 and referring to industrial accident board's membership in a rating organization; amending section 92-1104, R. C. M. 1947, relating to industrial accident board's power to determine premiums and referring to its membership in a rating organization; and amending section 92-1105, R. C. M. 1947, relating to the intent and purpose of plan Number 3, and referring to the industrial accident board's membership in a rating organization.

#### Cross-References

Workmen's Compensation Act, Sec. 92-101 et seq.

**40-5602. Applicability of act.** This act applies to the making of premium rates for workmen's compensation insurance issued under compensation plan Number 2 of the Workmen's Compensation Act, sections 92-1001 to and including 92-1012, and for workmen's compensation insurance issued under compensation plan Number 3 of the Workmen's Compensation Act, sections 92-1101 to and including 92-1123.

**History:** En. Sec. 2, Ch. 329, L. 1969.

**40-5603. Certain reciprocal insurers excluded.** This act shall not apply as to any reciprocal insurer transacting workmen's compensation insurance only and insuring solely the hazards or perils of its subscribers exclusively associated with a single industry.

**History:** En. Sec. 3, Ch. 329, L. 1969.

**40-5604. Rates, how made.** All rates shall be made in accordance with the following provisions:

(1) Due consideration shall be given to past and prospective loss experience within and outside this state, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both country-wide and those specially applicable to this state, and to all other relevant factors within and outside this state.

(2) The systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

(3) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates on individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among

risks that can be demonstrated to have a probable effect upon losses or expenses.

**History:** En. Sec. 4, Ch. 329, L. 1969.

**40-5605. Excessive, inadequate or discriminatory rates prohibited.** Rates shall not be excessive, inadequate or unfairly discriminatory.

**History:** En. Sec. 5, Ch. 329, L. 1969.

**40-5606. Uniformity neither required nor prohibited.** Except to the extent necessary to meet the provisions of section 4 [40-5604], uniformity among insurers in any matter within the scope of section 4 [40-5604] and section 5 [40-5605] is neither required nor prohibited.

**History:** En. Sec. 6, Ch. 329, L. 1969.

**40-5607. Classification manuals, rules and rating plans filed with commissioner—supporting information required—public inspection.** (1) There shall be filed with the insurance commissioner on behalf of every insurer writing workmen's compensation coverages in this state, every manual of classifications, rules and rates, every rating plan and every modification of any of the foregoing which it proposes to use. Every such filing shall state the proposed effective date thereof, and shall indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the filing is supported, and the insurance commissioner does not have sufficient information to determine whether such filing meets the requirements of this act, he shall require the insurer's rating organization or the insurer to furnish the information upon which it supports the filing and in such event, the waiting period shall commence as of the date such information is furnished. The information furnished in support of a filing may include:

- (a) the experience or judgment of the insurer;
  - (b) the insurer's or rating organization's interpretation of any statistical data relied upon;
  - (c) the experience of other insurers or rating organizations; or
  - (d) any other relevant factors.
- (2) A filing and any supporting information shall be open to public inspection after the filing becomes effective.

**History:** En. Sec. 7, Ch. 329, L. 1969.

**40-5608. Suspension or modification of filing requirements.** Under such rules and regulations as he shall adopt, the insurance commissioner may, by written order, suspend or modify the requirements of filing as to any kind of insurance, subdivision or combination thereof, or as to classes or risks, the rates for which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The insurance commissioner may make such examination as he may deem advisable

to ascertain whether any rates affected by such order meet the standards set forth in section 5 [40-5605].

**History:** En. Sec. 8, Ch. 329, L. 1969.

**40-5609. Review of filings by commissioner—waiting period—special filings.** (1) The insurance commissioner shall review filings as soon as reasonably possible after they have been made, in order to determine whether they meet the requirements of this act.

(2) Subject to the exception specified in subsection (3) below, each filing shall be on file for a waiting period of fifteen (15) days before it becomes effective, which period may be extended by the insurance commissioner for an additional period, not to exceed fifteen (15) days if he gives written notice within such waiting period to the rating organization which made the filing, that he needs such additional time for the consideration of the filing. Upon the written application by the insurer or rating organization, the insurance commissioner may authorize a filing which he has reviewed to become effective before expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of this act unless disapproved by the insurance commissioner within the waiting period or any extension thereof.

(3) Any special filing with respect to a surety or guaranty bond required by law or by court or executive order or by order, rule or regulation of a public body, not covered by a previous filing, shall become effective when filed and shall be deemed to meet the requirements of this act until such time as the insurance commissioner reviews the filing and so long thereafter as the filing remains in effect.

**History:** En. Sec. 9, Ch. 329, L. 1969.

**40-5610. Notice of disapproval of filing.** If, within the waiting period or any extension thereof as provided in section 9 [40-5609], the insurance commissioner finds that a filing does not meet the requirements of this act, he shall send to the rating organization which made the filing, written notice of disapproval of the filing, specifying therein in what respect he finds the filing fails to meet the requirements of this act and stating that the filing shall not become effective.

**History:** En. Sec. 10, Ch. 329, L. 1969.

**40-5611. Notice and hearing on disapproval of filing subsequent to review period.** If, at any time subsequent to the applicable review period provided for in section 9 [40-5609], the insurance commissioner finds that a filing does not meet the requirements of this act, he shall, after a hearing held upon not less than ten (10) days' written notice specifying the matters to be considered at such hearing, to every rating organization which made the filing, issue an order specifying in what respect he finds that the filing fails to meet the requirements of this act, and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective. Copies of the order shall be sent to



every such rating organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

**History:** En. Sec. 11, Ch. 329, L. 1969.

**40-5612. Filings meeting requirements of act not disapproved.** No manual of classifications, rules, rating plan, or any modification of any of the foregoing which establishes standards for measuring variations in hazards or expense provisions, or both, and which has been filed pursuant to the requirements of section 7 [40-5607], shall be disapproved if the rates thereby produced meet the requirements of this act.

**History:** En. Sec. 12, Ch. 329, L. 1969.

**40-5613. Enforcement of filed rates—lower rates prohibited.** No insurer shall issue, renew or continue in force in this state any workmen's compensation insurance at premium rates which are less than the rates applicable under the filings in effect for the insurer, or in effect in accordance with section 8 [40-5608], except as is otherwise provided in this act as to the industrial accident board.

**History:** En. Sec. 13, Ch. 329, L. 1969.

**40-5614. Excess rates.** Upon the written application of the insured, stating his reasons therefor, filed with and approved by the insurance commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

**History:** En. Sec. 14, Ch. 329, L. 1969.

**40-5615. Deviations from filings—procedure and effect of modifications.** (1) Every member of a rating organization shall adhere to the filings made on its behalf by such organization, except that any plan Number 2 insurer may make written application to the insurance commissioner for permission to file a uniform percentage decrease or increase to be applied to the premium produced by the rating system so filed for a kind of insurance or for a class of insurance which is found by the insurance commissioner to be a proper rating unit for the application of such uniform percentage decrease or increase, or for a subdivision of a kind of insurance:

(a) comprised of a group of manual classifications which is treated as a separate unit for rate making purposes; or

(b) for which separate expense provisions are included in the filings of the rating organization. Such application shall specify the basis for the modification and shall be accompanied by the data upon which the applicant relies. A copy of the application and data shall be sent simultaneously to such rating organization.

(2) The insurance commissioner shall set a time and place for a hearing at which the insurer and such rating organization may be heard and shall give them not less than ten (10) days' written notice thereof. In the event the insurance commissioner is advised by the rating organi-

zation that it does not desire a hearing he may, upon the consent of the applicant, waive such hearing. In permitting or denying such modification with respect to workmen's compensation insurance, the insurance commissioner shall give consideration to the operating methods and expense provisions of the insurer as compared with the expense provisions included in the rating system filed by such rating organization.

(3) The insurance commissioner shall issue an order permitting the modification for such insurer to be filed, if he finds it to be justified, and it shall thereupon become effective. He shall issue an order denying such application if he finds that the modification is not justified or that the resulting premiums would be excessive, inadequate or unfairly discriminatory.

(4) Each deviation permitted to be filed shall be effective for a period of one (1) year from the date of such permission, unless terminated sooner with the approval of the insurance commissioner.

(5) Any deviation adopted by the industrial accident board for plan Number 3 rates shall be final and without review or approval by the state insurance commissioner except that the said board shall file with the insurance commissioner's office a schedule of such deviations so adopted and a statement of the bases for such modification.

**History:** En. Sec. 15, Ch. 329, L. 1969.

**40-5616. Membership in rating organization required.** Every insurer, including the Montana state industrial accident board, writing workmen's compensation insurance in this state, shall be a member of a workmen's compensation rating organization. No insurer may, at the same time, belong to more than one rating organization with respect to such insurance.

**History:** En. Sec. 16, Ch. 329, L. 1969.

**40-5617. Composition of rating organization.** Such a rating organization shall have as members not less than five (5) insurers authorized to write and writing workmen's compensation insurance in this state, and whose combined experience is determined by the insurance commissioner to be reasonably adequate for rate-making purposes.

**History:** En. Sec. 17, Ch. 329, L. 1969.

**40-5618. Industrial accident board as member of committee on operation of rating organization—other members.** In a rating organization of which the Montana industrial accident board is a member, it shall be entitled, without election, to membership on any committee thereof established in connection with the operation of the rating organization in this state. One member of each such committee shall be chosen by the stock insurers and one by the nonstock insurers. Such committee shall consist of three (3) members as herein provided for.

**History:** En. Sec. 18, Ch. 329, L. 1969.

**Repealing Clause**

Section 19 of Ch. 329, Laws 1969 repealed all acts and parts of acts in conflict therewith.

## CHAPTER 57—INSURANCE GUARANTY ASSOCIATION

Section 40-5701.	Title.
40-5702.	Purpose.
40-5703.	Scope.
40-5704.	Construction.
40-5705.	Definitions.
40-5706.	Creation of the association.
40-5707.	Board of directors.
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40-5709.	Plan of operation.
40-5710.	Duties and powers of the commissioner.
40-5711.	Effect of paid claims.
40-5712.	Nonduplication of recovery.
40-5713.	Prevention of insolvencies.
40-5714.	Examination of the association.
40-5715.	Tax exemption.
40-5716.	Recognition of assessments in rates.
40-5717.	Immunity.
40-5718.	Stay of proceedings—reopening of default judgments.

**40-5701. Title.** This act shall be known and may be cited as the Montana Insurance Guaranty Association Act.

**History:** En. Sec. 1, Ch. 63, L. 1971. for all insurers, to protect the public from insurer insolvency and providing for assessment among association members under certain conditions.

**Title of Act**

A bill to provide a guaranty association

**40-5702. Purpose.** The purpose of this act is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers.

**History:** En. Sec. 2, Ch. 63, L. 1971.

**40-5703. Scope.** This act shall apply to all kinds of direct insurance, except life, title, surety, disability, credit, mortgage, guaranty and ocean marine insurance.

**History:** En. Sec. 3, Ch. 63, L. 1971.

**40-5704. Construction.** This act shall be liberally construed to effect the purpose under section 2 [40-5702] which shall constitute an aid and guide to interpretation.

**History:** En. Sec. 4, Ch. 63, L. 1971.

**40-5705. Definitions.** As used in this act, (1) "Association" means the Montana insurance guaranty association created under section 6 [40-5706] of this act.

(2) "Commissioner" means the commissioner of insurance of this state.

(3) "Covered claim" means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this act applies issued by an insurer, if such insurer becomes an insolvent



insurer after the effective date of this act and (a) the claimant or insured is a resident of this state at the time of the insured event; or (b) the property from which the claim arises is permanently located in this state. "Covered claim" shall not include any amount due an reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise.

(4) "Insolvent insurer" means (a) an insurer authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred and (b) determined to be insolvent by a court of competent jurisdiction.

(5) "Member insurer" means any person who (a) writes any kind of insurance to which this act applies under section 3 [40-5703], including the exchange of reciprocal or interinsurance contracts, and (b) is licensed to transact insurance in this state.

(6) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this act applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(7) "Person" means any individual, corporation, partnership, association or voluntary organization.

History: En. Sec. 5, Ch. 63, L. 1971.

**40-5706. Creation of the association.** There is created a nonprofit unincorporated legal entity to be known as the Montana insurance guaranty association. All insurers defined as member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under section 9 [40-5709] and shall exercise its powers through a board of directors established under section 7 [40-5707].

History: En. Sec. 6, Ch. 63, L. 1971.

**40-5707. Board of directors.** (1) The board of directors of the association shall consist of not less than five (5) nor more than nine (9) persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments. If no members are selected within sixty (60) days after the effective date of this act, the commissioner may appoint the initial members of the board of directors.

(2) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

History: En. Sec. 7, Ch. 63, L. 1971.

**40-5708. Powers and duties of the association.** (1) The association shall:

(a) Be obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within thirty (30) days after the determination of insolvency, or before the policy expiration date if less than thirty (30) days after the determination, or before the insured replaces the policy or causes its cancellation, if he does so within thirty (30) days of the determination, but such obligation shall include only that amount of each covered claim which is in excess of one hundred dollars (\$100) and is less than three hundred thousand [dollars] (\$300,000), except that the association shall pay the full amount of any covered claim arising out of a workmen's compensation policy. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

(b) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.

(c) Assess insurers amounts necessary to pay the obligations of the association under paragraph (a) subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, and the cost of examinations under section 13 [40-5713] and other expenses authorized by this act. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bears to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not later than thirty (30) days before it is due. No member insurer may be assessed in any year an amount greater than two per cent (2%) of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other assets of the association does not provide in any one (1) year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer.

(d) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested.

(e) Notify such persons as the commissioner directs under section 10 [40-5710] (2)(a).

(f) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

(g) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this act.

(2) The association may: (a) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

(b) Borrow funds necessary to effect the purposes of this act in accord with the plan of operation.

(c) Sue or be sued.

(d) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this act.

(e) Perform such other acts as are necessary or proper to effectuate the purpose of this act.

(f) Refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year.

History: En. Sec. 8, Ch. 63, L. 1971.

**40-5709. Plan of operation.** (1) (a) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

(b) If the association fails to submit a suitable plan of operation within ninety (90) days following the effective date of this act or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this act. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall: (a) Establish the procedures whereby all the powers and duties of the association under section 8 [40-5708] will be performed.

(b) Establish procedures for handling assets of the association.

(c) Establish the amount and method of reimbursing members of the board of directors under section 7 [40-5707].



(d) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

(e) Establish regular places and times for meetings of the board of directors.

(f) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.

(g) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within thirty (30) days after the action or decision.

(h) Establish the procedures whereby selections for the board of directors will be submitted to the commissioner.

(i) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under section 8 [40-5708] (1)(c) and 8 [40-5708] (2)(b), are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this act.

**History: En. Sec. 9, Ch. 63, L. 1971.**

#### **40-5710. Duties and powers of the commissioner.**

(1) The commissioner shall: (a) Notify the association of the existence of an insolvent insurer not later than three (3) days after he receives notice of the determination of the insolvency.

(b) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

(2) The commissioner may: (a) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this act. Such notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.

(b) Suspend or revoke, after notice and hearing the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of

operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. Such fine shall not exceed five per cent (5%) of the unpaid assessment per month, except that no fine shall be less than one hundred dollars (\$100) per month.

(c) Revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

(3) Any final action or order of the commissioner under this act shall be subject to judicial review in a court of competent jurisdiction.

History: En. Sec. 10, Ch. 63, L. 1971.

**40-5711. Effect of paid claims.** (1) Any person recovering under this act shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this act shall co-operate with the association to the same extent as such person would have been required to co-operate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association shall not operate to reduce the liability of insured's to the receiver, liquidator, or statutory successor for unpaid assessments.

(2) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this act against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

(3) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the rights of the association against the assets of the insolvent insurer.

History: En. Sec. 11, Ch. 63, L. 1971.

**40-5712. Nonduplication of recovery.** (1) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this act shall be reduced by the amount of any recovery under such insurance policy.

(2) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the in-

sured except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property, and if it is a workmen's compensation claim, he shall seek recovery first from the association of the residence of the claimant. Any recovery under this act shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

History: En. Sec. 12, Ch. 63, L. 1971.

**40-5713. Prevention of insolvencies.** (1) It shall be the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

(2) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within thirty (30) days of the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection (3). The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.

(3) It shall be the duty of the commissioner to report to the board of directors when he has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public.

(4) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

(5) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(6) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the commissioner.

History: En. Sec. 13, Ch. 63, L. 1971.



**40-5714. Examination of the association.** The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

History: En. Sec. 14, Ch. 63, L. 1971.

**40-5715. Tax exemption.** The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property.

History: En. Sec. 15, Ch. 63, L. 1971.

**40-5716. Recognition of assessments in rates.** The rates and premiums charged for insurance policies to which this act applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

History: En. Sec. 16, Ch. 63, L. 1971.

**40-5717. Immunity.** There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this act.

History: En. Sec. 17, Ch. 63, L. 1971.

**40-5718. Stay of proceedings—reopening of default judgments.** All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state shall be stayed for sixty (60) days from the date the insolvency is determined to permit proper defense by the association of all pending causes of action. As to any covered claims arising from a judgment under any decision, verdict or finding based on the default of the insolvent insurer or its failure to defend an insured, the association either on its own behalf or on behalf of such insured may apply to have such judgment, order, decision, verdict or finding set aside by the same court or administrator that made such judgment, order, decision, verdict or finding and shall be permitted to defend against such claim on the merits.

History: En. Sec. 18, Ch. 63, L. 1971.

#### CHAPTER 58—LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT

Section 40-5801.	Title.
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40-5805.	Definitions.
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**40-5801. Title.** This act shall be known and may be cited as the Montana Life and Health Insurance Guaranty Association Act.

**History:** En. 40-5801 by Sec. 1, Ch. 245, L. 1974. **Title of Act** Montana Model Life and Health Insurance Guaranty Association Act.

**40-5802. Purpose.** The purpose of this act is to protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment of the insurer issuing such policies or contracts. To provide this protection, (1) an association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages, (2) members of the association are subject to assessment to provide funds to carry out the purpose of this act, and (3) the association is authorized to assist the commissioner, in the prescribed manner, in the detection and prevention of insurer impairments.

**History:** En. 40-5802 by Sec. 2, Ch. 245, L. 1974.

**40-5803. Scope.** (1) This act shall apply to direct life insurance policies, health insurance policies, annuity contracts, and contracts supplemental to life and health insurance policies and annuity contracts issued by persons authorized to transact insurance in this state at any time.

(2) This act shall not apply to:

- (a) any such policies or contracts, or any part of such policies or contracts, under which the risk is borne by the policyholder;
- (b) any such policy or contract or part thereof assumed by the impaired insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued.

**History:** En. 40-5803 by Sec. 3, Ch. 245, L. 1974.

**40-5804. Construction.** This act shall be liberally construed to effect the purpose under section 2 [40-5802] which shall constitute an aid and guide to interpretation.

**History:** En. 40-5804 by Sec. 4, Ch. 245, L. 1974.

**40-5805. Definitions.**

As used in this act:

(1) "Account" means either of the three accounts created under section 6 [40-5806].

(2) "Association" means the Montana life and health insurance guaranty association created under section 6 [40-5806].

(3) "Commissioner" means the commissioner of insurance of this state.

(4) "Contractual obligation" means any obligation under covered policies.

(5) "Covered policy" means any policy or contract within the scope of this act under section 3 [40-5803].

(6) "Impaired insurer" means

(a) an insurer which after the effective date of this act, becomes insolvent and is placed under a final order of liquidation, rehabilitation, or conservation by a court of competent jurisdiction, or

(b) an insurer deemed by the commissioner after the effective date of this act to be unable or potentially unable to fulfill its contractual obligations.

(7) "Member insurer" means any person authorized to transact in this state any kind of insurance to which this act applies under section 3 [40-5803].

(8) "Premiums" means direct gross insurance premiums and annuity considerations written on covered policies, less return premiums and considerations thereon and dividends paid or created to policyholders on such direct business. "Premiums" do not include premiums and considerations on contracts between insurers and reinsurers. As used in section 9 [40-5809] "premiums" are those for the calendar year preceding the determination of impairment.

(9) "Person" means any individual, corporation, partnership, association or voluntary organization.

(10) "Resident" means any person who resides in this state at the time the impairment is determined and to whom contractual obligations are owed.

History: En. 40-5805 by Sec. 5, Ch. 245,  
L. 1974.

**40-5806. Creation of the association.** (1) There is created a non-profit legal entity to be known as the Montana life and health insurance guaranty association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under section 10 [40-5810] and shall exercise its powers through a board of directors established under section 7 [40-5807]. For purposes of administration and assessment, the association shall maintain three accounts:

(a) the health insurance account;



- (b) the life insurance account; and
- (c) the annuity account.

(2) The association shall come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the insurance laws of this state.

History: En. 40-5806 by Sec. 6, Ch. 245, L. 1974.

**40-5807. Board of directors.** (1) The board of directors of the association shall consist of five (5) members serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term in the manner described in the plan of operation. To select the initial board of directors, and initially organize the association, the commissioner shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting each member insurer shall be entitled to one (1) vote in person or by proxy. If the board of directors is not selected within sixty (60) days after notice of the organizational meeting, the commissioner may appoint the initial members.

(2) In approving selections or in appointing members to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors but members of the board shall not otherwise be compensated by the association for their services.

History: En. 40-5807 by Sec. 7, Ch. 245, L. 1974.

**40-5808. Powers and duties of the association.** In addition to the powers and duties enumerated in other sections of this act,

(1) If a domestic insurer is an impaired insurer, the association may, prior to an order of liquidation or rehabilitation, and subject to any conditions imposed by the association other than those which impair the contractual obligations of the impaired insurer, and approved by the impaired insurer and the commissioner:

(a) guarantee or reinsure, or cause to be guaranteed, assumed, or re-insured, all the covered policies of the impaired insurer;

(b) provide such moneys, pledges, notes, guarantees, or other means as are proper to effectuate [subdivision (a) of this subsection], and assure payment of the contractual obligations of the impaired insurer pending action under [subdivision (a) of this subsection];

(c) loan money to the impaired insurer.

(2) If a foreign or alien insurer is an impaired insurer, the association may, prior to an order of liquidation, rehabilitation, or conservation, with respect to the covered policies of residents and subject to any conditions imposed by the association other than those which impair the contractual

obligations of the impaired insurer, and approved by the impaired insurer and the commissioner:

(a) guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured, the impaired insurer's covered policies of residents;

(b) provide such moneys, pledges, notes, guarantees or other means as are proper to effectuate [subdivision (a) of this subsection], and assure payment of the impaired insurer's contractual obligations to residents pending action under [subdivision (a) of this subsection];

(c) loan money to the impaired insurer.

(3) If a domestic insurer is an impaired insurer under an order of liquidation or rehabilitation, the association shall, subject to the approval of the commissioner:

(a) guarantee, assume, or reinsure, or cause to be guaranteed, assumed or reinsured the covered policies of the impaired insurer;

(b) assure payment of the contractual obligations of the impaired insurer; and

(c) provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.

If the association fails to act within a reasonable period of time, the commissioner shall have the powers and duties of the association under this act with respect to such domestic impaired insurer.

(4) If a foreign or alien insurer is an impaired insurer under an order of liquidation, rehabilitation, or conservation, the association shall, subject to the approval of the commissioner:

(a) guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies of residents;

(b) assure payment of the contractual obligations of the impaired insurer to residents; and

(c) provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.

If the association fails to act within a reasonable period of time, the commissioner shall have the powers and duties of the association under this act with respect to such foreign or alien impaired insurer.

(5) (a) In carrying out its duties under subsections (3) and (4), the association may request that there be imposed policy liens, contract liens, moratoriums on payments, or other similar means and such liens, moratoriums, or similar means may be imposed if the commissioner:

(i) finds that the amounts which can be assessed under this act are less than the amounts needed to assure full and prompt performance of the impaired insurer's contractual obligations, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens, moratoriums, or similar means to be in the public interest, and

(ii) approve the specific policy liens, contract liens, moratoriums, or similar means to be used.

(b) Before being obligated under subsections (3) and (4) the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans and such temporary

moratoriums and liens may be imposed if they are approved by the commissioner.

(6) The association shall have no liability under this section for any covered policy of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides by statute or regulation, for residents of this state protection substantially similar to that provided by this act for residents of other states.

(7) The association may render assistance and advice to the commissioner, upon his request, concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired insurer.

(8) The association shall have standing to appear before any court in this state with jurisdiction over an impaired insurer concerning which the association is or may become obligated under this act. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired insurer and the determination of the covered policies and contractual obligations.

(9) (a) Any person receiving benefits under this act shall be deemed to have assigned his rights under the covered policy to the association to the extent of the benefits received because of this act whether the benefits are payments of contractual obligations or continuation of coverage. The association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this act upon such person. The association shall be subrogated to these rights against the assets of any impaired insurer.

(b) The subrogation rights of the association under this subsection shall have the same priority against the assets of the impaired insurer as that possessed by the person entitled to receive benefits under this act.

(10) The contractual obligations of the impaired insurer for which the association becomes or may become liable shall be as great as but no greater than the contractual obligations of the impaired insurer would have been in the absence of an impairment unless such obligations are reduced as permitted by subsection (5) but the association shall have no liability with respect to any portion of a covered policy to the extent that the death benefit coverage on any one life exceeds an aggregate of three hundred thousand dollars (\$300,000).

(11) The association may:

(a) enter into such contracts as are necessary or proper to carry out the provisions and purposes of this act;

(b) sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under section 9 [40-5809];

(c) borrow money to effect the purposes of this act. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;



(d) employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this act;

(e) negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association;

(f) take such legal action as may be necessary to avoid payment of improper claims;

(g) exercise, for the purposes of this act and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired insurer.

History: En. 40-5808 by Sec. 8, Ch. 245, L. 1974.

**40-5809. Assessments.** (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such times and for such amounts as the board finds necessary. The board shall collect the assessments after thirty (30) days' written notice to the member insurers before payment is due.

(2) There shall be three classes of assessments, as follows:

(a) Class A assessments shall be made for the purpose of meeting administrative costs and other general expenses not related to a particular impaired insurer.

(b) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 8 [40-5808] with regard to an impaired domestic insurer.

(c) Class C assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 8 [40-5808] with regard to an impaired foreign or alien insurer.

(3) (a) The amount of any Class A assessment for each account shall be determined by the board. The amount of any Class B or C assessment shall be divided among the accounts in the proportion that the premiums received by the impaired insurer on the policies covered by each account bears to the premiums received by such insurer on all covered policies.

(b) Class A and Class C assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account bears to such premiums received on business in this state by all assessed member insurers.

(c) Class B assessments for each account shall be made separately for each state in which the impaired domestic insurer was authorized to transact insurance at any time, in the proportion that the premiums received on business in such state by the impaired insurer on policies covered by such account bears to such premiums received in all such states by the

impaired insurer. The assessments against member insurers shall be in the proportion that the premiums received on business in each such state by each assessed member insurer on policies covered by each account bears to such premiums received on business in each state by all assessed member insurers.

(d) Assessments for funds to meet the requirements of the association with respect to an impaired insurer shall not be made until necessary to implement the purposes of this act. Classification of assessments under subsection (2) and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account shall not in any one (1) calendar year exceed two per cent (2%) of such insurer's premiums in this state on the policies covered by the account.

(5) In the event an assessment against a member insurer is abated, or deferred, in whole or in part, because of the limitations set forth in subsection (4), the amount by which such assessment is abated or deferred, shall be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in either account, does not provide in any one (1) year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this act.

(6) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

(7) It shall be proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this act, to consider the amount reasonably necessary to meet its assessment obligations under this act.

(8) The association shall issue to each insurer paying an assessment under this act a certificate of contribution, in a form prescribed by the commissioner, for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

History: En. 40-5809 by Sec. 9, Ch. 245, L. 1974.

**40-5810. Plan of operation.** (1) (a) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

(b) If the association fails to submit a suitable plan of operation within one hundred eighty (180) days following the effective date of this act or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this act. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall, in addition to requirements enumerated elsewhere in this act:

(a) establish procedures for handling the assets of the association;

(b) establish the amount and method of reimbursing members of the board of directors under section 7 [40-5807];

(c) establish regular places and times for meetings of the board of directors;

(d) establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(e) establish the procedures whereby selections for the board of directors will be made and submitted to the commissioner;

(f) establish any additional procedures for assessments under section 9 [40-5809];

(g) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under sections 8 (11) (c) [40-5808 (11) (c)] and 9 [40-5809], are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two (2) or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this act.

**History:** En. 40-5810 by Sec. 10, Ch. 245, L. 1974.

**40-5811. Duties and powers of the commissioner.** (1) In addition to the duties and powers enumerated elsewhere in this act, the commissioner shall:



(a) notify the board of directors of the existence of an impaired insurer not later than three (3) days after a determination of impairment is made or he receives notice of impairment;

(b) upon request of the board of directors, provide the association with a statement of the premiums in the appropriate states for each member insurer;

(c) when an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer shall constitute notice to its shareholders, if any. The failure of the insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under this act;

(d) in any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the commissioner shall be appointed conservator.

(2) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed five per cent (5%) of the unpaid assessment per month, but no forfeiture shall be less than one hundred dollars (\$100) per month.

(3) Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within thirty (30) days of the action being appealed. Any final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction.

(4) The liquidator, rehabilitator, or conservator of any impaired insurer may notify all interested persons of the effect of this act.

History: En. 40-5811 by Sec. 11, Ch. 245, L. 1974.

**40-5812. Prevention of impairments.** To aid in the detection and prevention of insurer impairments:

(1) The board of directors shall, upon majority vote, notify the commissioner of any information indicating any member insurer may be unable or potentially unable to fulfill its contractual obligations.

(2) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be unable or potentially unable to fulfill its contractual obligations. The commissioner may conduct such examination. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be

treated as are other examination reports. In no event shall such examination report be released to the board of directors of the association prior to its release to the public, but this shall not excuse the commissioner from his obligation to comply with subsection (3). The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public and shall be released at that time only if the examination discloses that the examined insurer is unable or potentially unable to meet its contractual obligations.

(3) The commissioner shall report to the board of directors when he has reasonable cause to believe that any member insurer examined at the request of the board of directors may be unable or potentially unable to fulfill its contractual obligations.

(4) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

(5) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer impairments.

(6) The board of directors shall, at the conclusion of any insurer impairment in which the association carried out its duties under this act or exercised any of its powers under this act, prepare a report on the history and causes of such impairment, based on the information available to the association, and submit such report to the commissioner.

History: En. 40-5812 by Sec. 12, Ch. 245, L. 1974.

**40-5813. Appointment of association nominee.** The association may recommend a natural person to serve as a special deputy to act for the commissioner and under his supervision in the liquidation, rehabilitation, or conservation, of any member insurer.

History: En. 40-5813 by Sec. 13, Ch. 245, L. 1974.

**40-5814. Miscellaneous provisions.** (1) Nothing in this act shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired insurer operating under a plan with assessment liability.

(2) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under section 8 [40-5808]. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired insurer, upon the termination of the impairment of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the association to render a report of its activities under section 15 [40-5815].

(3) For the purpose of carrying out its obligations under this act, the association shall be deemed to be a creditor of the impaired insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to section 8(9) [40-5808(9)]. All assets of the impaired insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired insurer as required by this act. Assets attributable to covered policies, as used in this subsection, is that proportion of the assets which the reserves that should have been established for such policies bear to the reserve that should have been established for all policies of insurance written by the impaired insurer.

(4) (a) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders and policyowners of the impaired insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such impaired insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(b) No distribution to stockholders, if any, of an impaired insurer shall be made until and unless the total amount of assessments levied by the association with respect to such insurer have been fully recovered by the association.

(5) It shall be a prohibited unfair trade practice for any person to make use in any manner of the protection afforded by this act in the sale of insurance.

(6) (a) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of paragraphs (b) to (d).

(b) No such dividend shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c) Any person who as an affiliate that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions he received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared, shall be liable up to the amount of distributions he would have received if they had been paid immediately. If two persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(d) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the impaired insurer to pay the contractual obligations of the impaired insurer.



(e) If any person liable under paragraph (c) is insolvent, all its affiliates that controlled it at the time the dividend was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

History: En. 40-5814 by Sec. 14, Ch. 245, L. 1974.

**40-5815. Examination of the association—annual report.** The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner, not later than May 1 of each year, a financial report for the preceding calendar year in a form approved by the commissioner and a report of its activities during the preceding calendar year.

History: En. 40-5815 by Sec. 15, Ch. 245, L. 1974.

**40-5816. Tax exemptions.** The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real property.

History: En. 40-5816 by Sec. 16, Ch. 245, L. 1974.

**40-5817. Tax—writeoffs of certificates of contribution.** (1) Unless a longer period has been allowed by the commissioner, a member insurer shall at its option have the right to show a certificate of contribution as an asset in the form approved by the commissioner pursuant to section 9 (8) [40-5809(8)], at percentages of the original face amount approved by the commissioner, for calendar years as follows:

One hundred per cent (100%) for calendar year of issuance, eighty per cent (80%) for the first calendar year after year of issuance, sixty per cent (60%) for second calendar year after year of issuance, forty per cent (40%) for third calendar year after year of issuance, twenty per cent (20%) for fourth calendar year after year of issuance.

(2) The insurer may offset the amount written off by it in the calendar year under subsection (1) above, against its premium tax liability to this state accrued with respect to business transacted in such year.

(3) Any sums acquired by refund, pursuant to section 9 (6) [40-5809(6)], from the association which have therefore been written off by contributing insurers and offset against premium taxes as provided in subsection (2) above, and is not then needed for purposes for this act, shall be paid by the association to the commissioner and by him deposited with the state treasurer for credit to the general fund of this state.

History: En. 40-5817 by Sec. 17, Ch. 245, L. 1974.

**40-5818. Immunity.** There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, or the commissioner or his representa-

tives, for any action taken by them in the performance of their powers and duties under this act.

History: En. 40-5818 by Sec. 18, Ch. 245, L. 1974.

**40-5819. Stay of proceedings—reopening default judgments.** All proceedings in which the impaired insurer is a party in any court in this state shall be stayed sixty (60) days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to a judgment under any decision, order, verdict, or finding based on default the association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.

History: En. 40-5819 by Sec. 19, Ch. 245, L. 1974.





# REVISED CODES OF MONTANA

## VOLUME 3

### Part 2

### 1974 Cumulative Pocket Supplement

#### *Containing*

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE  
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF  
REPLACEMENT VOLUME 3 (PART 2) OF  
THE 1947 REVISED CODES

#### AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 3  
(PART 2) THROUGH VOLUME 518, PACIFIC  
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# MONTANA REVISED CODES

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## CHAPTER 1—OBLIGATIONS OF EMPLOYERS

- Section
- 41-118. Deceived employees—action for damages.
  - 41-119. Lie detector tests—when prohibited.
  - 41-120. Law enforcement agencies exempt.

### 41-103. (7758) When not.

#### Assumption of Risk

Where master, in an action against him for injuries sustained by a servant during course of employment, introduced evidence tending to show that the servant had actual or implied knowledge of the dangerous condition but voluntarily remained in the face of the danger, and that the injury resulted as a usual and probable consequence of the dangerous condition, then refusal of the trial court to

instruct the jury properly on assumption of risk deprived defendant of a possible defense and was prejudicial error. *Wollan v. Lord*, 142 M 498, 385 P 2d 102.

Employee with prior back injury who neither informed his employer of his previous injury, nor refused to lift 500-pound tire without additional help, assumed the risk of the resultant additional injury to his back. *McLaughlin v. Ballard*, 156 M 181, 478 P 2d 281.

**41-118. Deceived employees—action for damages.** (1) No one doing business in this state shall induce, influence, persuade, or engage workmen to change from one place to another in this state, through or by means of deception, misrepresentation, or false advertising concerning the kind or character of the work, or the sanitary or other conditions of employment, or as to the existence of a strike or other trouble pending between the employer and the employees, at the time of, or immediately prior to, such engagement. Failure to state in any advertisement, proposal, or con-

tract for the employment of workmen that there is a strike, lockout, or other labor trouble at the place of the proposed employment, when in fact such strike, lockout, or other trouble then actually exists at such place, shall be deemed a false advertisement and misrepresentation for the purpose of this section.

(2) Any workman influenced, induced, persuaded, or engaged through or by means of any of the things prohibited by subsection (1) of this section has a right of action for recovery of all damages that he had sustained in consequence of the deception, misrepresentation, or false advertising used to induce him to change his place of employment, against anyone directly or indirectly procuring such change, and in addition thereto, he shall recover reasonable attorneys' fees to be fixed by the court and taxed as costs in any judgment recovered.

History: En. 41-118 by Sec. 2, Ch. 513, L. 1973.

**41-119. Lie detector tests—when prohibited.** No person, firm, corporation or other business entity or representative thereof, shall require as a condition for employment or continuation of employment any person to take a polygraph test or any form of a mechanical lie detector test. A person who violates this section is guilty of a misdemeanor.

History: En. Sec. 1, Ch. 46, L. 1974.

#### Title of Act

An act prohibiting an employer, except law enforcement agencies, from requiring

an employee or prospective employee to take a mechanical lie detector test as a condition of obtaining or continuing employment; providing a penalty; and providing an effective date.

**41-120. Law enforcement agencies exempt.** This act shall not apply to public law enforcement agencies.

History: En. Sec. 2, Ch. 46, L. 1974.

#### Effective Date

Section 3 of Ch. 46, Laws 1974 provided

the act should be in effect from and after its passage and approval. Approved February 26, 1974.

## CHAPTER 2—OBLIGATIONS OF EMPLOYEES

### 41-211. (7778) What belongs to employer.

#### Customer Lists

Where names and addresses of milk-route customers were not confidential and were readily accessible, route salesman who terminated his employment with a dairy and returned his list of customers

but remembered their names and addresses would not be enjoined from soliciting them as customers for a competing dairy. *Best Dairy Farms, Inc. v. Houchen*, 152 M 194, 448 P 2d 158.

## CHAPTER 3—TERMINATION OF EMPLOYMENT

Section 41-304. Termination at will.

41-305.1. Termination of employment because of attachment or garnishment prohibited.

**41-304. (7789) Termination at will.** An employment having no specified term may be terminated at the will of either party, on notice to the other, except where otherwise provided by sections 41-101 to 41-407

and 2-109 to 2-112 and 2-401 to 2-405, and except as provided in section 1 [41-305.1] of this act.

**History:** En. Sec. 2703, Civ. C. 1895; re-en. Sec. 5274, Rev. C. 1907; re-en. Sec. 7789, R. C. M. 1921; amd. Sec. 2, Ch. 245, L. 1969. Cal. Civ. C. Sec. 1999. Field Civ. C. Sec. 1029.

#### Amendments

The 1969 amendment added "and except as provided in section 1 of this act."

### 41-305. (7790) Termination by employer for fault.

#### Burden of Proof

Employer, who introduced evidence of drinking, hang-overs, and other matters in an effort to establish cause for discharge but whose superintendent testified as to employee's good work and that employer instructed him to tell employee

that employer did not have any more work, was running out of money, and could not carry a crew through the winter, failed to establish that employee's discharge was for good cause. *Ameline v. Pack & Co.*, 157 M 301, 485 P 2d 689.

**41-305.1. Termination of employment because of attachment or garnishment prohibited.** No employer shall discharge or lay off an employee because of attachment or garnishment served on the employer against the wages of the employee.

**History:** En. Sec. 1, Ch. 245, L. 1969.

#### Title of Act

An act relating to termination of em-

ployment providing that garnishment or attachment of wages may not be grounds for termination of employment; amending section 41-304, R. C. M. 1947.

### 41-307. (7792) Compensation of employee dismissed for cause.

#### Dismissal for Cause

Employer, who introduced evidence of drinking, hang-overs, and other matters in an effort to establish cause for discharge, but whose superintendent testified as to employee's good work, that employer instructed him to tell employee

that employer did not have any more work, was running out of money, and could not carry a crew through the winter, failed to establish that employee's discharge was for "good cause." *Ameline v. Pack & Co.*, 157 M 301, 485 P 2d 689.

## CHAPTER 4—MASTER AND SERVANT

### 41-403. (7796) Same—presumed to be monthly, when.

#### Reimbursement of Expenses

This section is broad enough to cover reimbursement of expenses incurred by the employee, and employee's claim for

reimbursement accrued monthly in the absence of any other understanding. *Cartwright v. Joyce*, 155 M 478, 473 P 2d 515.

## CHAPTER 6—REPORT OF ALIEN EMPLOYEES TO INDUSTRIAL ACCIDENT BOARD

(Repealed—Section 1, Chapter 144, Laws of 1971)

### 41-601 to 41-604. (3040 to 3043) Repealed.

#### Repeal

Sections 41-601 to 41-604 (Secs. 1 to 4, Ch. 134, L. 1919), relating to reports on

alien employees, were repealed by Sec. 1, Ch. 144, Laws 1971.

## CHAPTER 7—PREFERENCE OF MONTANA LABOR IN PUBLIC WORKS CONTRACTS

**Section 41-701.** Preference of Montana labor in public works—wage scale—not to conflict with federal statutes.



**41-701. (3043.1) Preference of Montana labor in public works—wage scale—not to conflict with federal statutes.** In all contracts hereafter let for state, county, municipal, school, heavy highway or municipal construction, services, repair and maintenance work under any of the laws of this state there shall be inserted in each of said contracts a provision by which the contractor must give preference to the employment of bona fide Montana residents in the performance of said work, and that the said contractor must further pay the standard prevailing rate of wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions in effect and applicable to the county or locality in which the work is being performed. "Standard prevailing rate of wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions, applicable to the county or locality in which the work is being performed," means those wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions which are paid in the county or locality by other contractors for work of a similar character performed in that county or locality by each craft, classification or type of workman needed to complete a contract under this act. When work of a similar character is not being performed in the county or locality, the standard prevailing rate of wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions shall be those rates established by collective bargaining agreements in effect in the county or locality for each craft, classification or type of workman needed to complete the contract. No contract shall be let to any person, firm, association or corporation refusing to execute an agreement with the above-mentioned provisions in it; provided that, in contracts involving the expenditure of federal aid funds this act shall not be enforced in such a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged soldiers, sailors and marines, and prohibiting as unlawful any other preference or discrimination among citizens of the United States. All public works contracts under this act shall be approved in writing by the legal adviser of the contracting state, county, municipal corporation, school district, assessment district or special improvement district body or officer prior to execution by the contracting public officer or officers. The Montana commissioner of labor and industry shall undertake to keep and maintain copies of collective bargaining agreements and other information from which rates and jurisdictional areas applicable to public works contracts under this act may be ascertained. Whenever the employer is not signatory party to a collective bargaining agreement, those moneys designated as negotiated fringe benefits shall be paid to the employee as wages.

**History:** En. Sec. 1, Ch. 102, L. 1931; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973.

#### **Amendments**

The 1969 amendment rewrote portions of this section, redefining the standard prevailing rate of wages to include fringe benefits for health and welfare and pen-

sion contributions and travel allowance provisions, providing for approval of public works contracts by the contracting state agency's legal adviser and requiring the commissioner of labor and industry to keep copies of collective bargaining agreements and other information.

The 1973 amendment inserted "services" near the beginning of the first sentence.

CHAPTER 8—VOCATIONAL REHABILITATION AND EDUCATION

- Section 41-801. [Transferred.]  
 41-803. [Transferred.]  
 41-805, 41-806. [Transferred.]  
 41-808. [Transferred.]  
 41-810. [Transferred.]  
 41-812, 41-813. [Transferred.]  
 41-816. Vocational rehabilitation of handicapped persons—legislative purpose and findings.  
 41-817. Definitions.  
 41-818. Purchase of services for severely handicapped persons—determination of eligibility—register of qualified organizations—rules and regulations.  
 41-819. Use of federal funds.

**41-801. [Transferred.]**

**Compiler's Notes**

Section 10 of Ch. 121, Laws of 1974 renumbered this section as sec. 71-2101.

**41-802. Repealed.**

**Repeal**

Section 41-802 (Sec. 2, Ch. 74, L. 1947; Sec. 2, Ch. 53, L. 1961), relating to estab-

lishment of the division of vocational rehabilitation, was repealed by Sec. 52, Ch. 121, Laws of 1974.

**41-803. [Transferred.]**

**Compiler's Notes**

Section 11, Ch. 121, Laws of 1974 renumbered this section as sec. 71-2102.

**41-804. Repealed.**

**Repeal**

Section 41-804 (Sec. 4, Ch. 74, L. 1947; Sec. 4, Ch. 53, L. 1961; Sec. 2, Ch. 192, L.

1971), relating to the administration of vocational rehabilitation services, was repealed by Sec. 52, Ch. 121, Laws of 1974.

**41-805, 41-806. [Transferred.]**

**Compiler's Notes**

Sections 12 and 13, Ch. 121, Laws of

1974 renumbered these sections as 71-2103 and 71-2104.

**41-807. Repealed.**

**Repeal**

Section 41-807 (Sec. 7, Ch. 74, L. 1947), relating to the acceptance and disposition

of gifts by the vocational rehabilitation director, was repealed by Sec. 52, Ch. 121, Laws of 1974.

**41-808. [Transferred.]**

**Compiler's Notes**

Section 14, Ch. 121, Laws of 1974 renumbered this section as sec. 71-2105.

**41-809. Repealed.**

**Repeal**

Section 41-809 (Sec. 9, Ch. 74, L. 1947), prohibiting assignment of maintenance

under the vocational rehabilitation act, was repealed by Sec. 52, Ch. 121, Laws of 1974.

**41-810. [Transferred.]****Compiler's Notes**

Section 15, Ch. 121, Laws of 1974 re-numbered this section as sec. 71-2106.

**41-811. Repealed.****Repeal**

Section 41-811 (Sec. 11, Ch. 74, L. 1947), relating to misuse of vocational rehabili-

tation lists and records, was repealed by Sec. 52, Ch. 121, Laws of 1974.

**41-812, 41-813. [Transferred.]****Compiler's Notes**

Sections 16 and 17, Ch. 121, Laws of

1974 renumbered these sections as secs. 71-2107 and 71-2108.

**41-814, 41-815. Repealed.****Repeal**

Sections 41-814 and 41-815 (Secs. 15, 16, Ch. 74, L. 1947), relating to the savings

clause and short title of the vocational rehabilitation act, were repealed by Sec. 52, Ch. 121, Laws of 1974.

**41-816. Vocational rehabilitation of handicapped persons—legislative purpose and findings.** The purpose of this act is to encourage the development, improvement and expansion of sheltered employment and supervised work programs for mentally retarded, severely handicapped and disadvantaged individuals to enable them to become contributing and self-supporting members of society as an alternative to dependency.

The condition of the mentally retarded, severely handicapped and disadvantaged is such that after laborious training in the schools and otherwise they reach the point in their lives where they can and should, under proper and continued guidance, engage in sheltered employment or supervised work to help them become contributing members of society instead of being dependent. For such persons, retention in sheltered employment or supervised work may constitute satisfactory placement. Such training and placement is often a suitable alternative to institutionalization or idleness and its consequences. By keeping these individuals within their communities and in touch with their families, a worthwhile dimension is added to their lives and they are thus spared the anxieties naturally attached to separation. All of these factors have also been shown to reflect tangible benefits upon the mentally retarded, severely handicapped or disadvantaged person by improving his over-all well-being.

**History: En. Sec. 1, Ch. 322, L. 1973.**

**Title of Act**

An act authorizing the department of social and rehabilitation services to pur-

chase vocational rehabilitation services for handicapped persons; authorizing the department to promulgate rules and regulations under this act; and providing for the expenditure of funds for this purpose.

**41-817. Definitions.** (1) "Severely handicapped person" means any individual:

(a) who has a physical or mental impairment which requires multiple services over an extended period of time and results from amputation, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, respiratory or pulmonary dysfunction, mental retardation,



mental illness, multiple sclerosis, muscular dystrophy, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, renal failure and any other disability, specified by the department in regulations it shall prescribe; and/or

(b) who, because of lack of social competence, mobility, experience, skills, training, or other successful characteristics, is in need of sheltered employment or work activity services in a protective setting.

(2) "Physical or mental disability" means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's activities or functioning. The term includes behavioral disorders characterized by deviant social behavior or impaired ability to carry out normal relationships with family and community which may result from vocational, educational, cultural, social, environmental or other factors.

(3) "Vocational rehabilitation services" means goods or services provided handicapped persons to enable such persons to be fit for gainful occupation or to attain or maintain a maximum degree of self-support or self-care and includes every type of goods and services for which federal funds are available for vocational rehabilitation purposes, including, but not limited to, the establishment, construction, development, operation and maintenance of workshops and rehabilitation facilities.

(4) "Self-care" means a reasonable degree of restoration from dependency upon others for personal needs and care and includes but is not limited to ability to live in own home, rather than requiring nursing home care and care for self rather than requiring attendant care.

(5) "Department" means the department of social and rehabilitation services.

(6) "Sheltered workshop" means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for handicapped workers, and/or providing such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

(7) "Work activity center" means a physically separated department of a workshop having an identifiable program, separate supervision and records, planned and designed exclusively to provide therapeutic activities for handicapped workers whose physical or mental impairment is so severe as to make their productive capacity inconsequential. Therapeutic activities include custodial activities (such as activities where the focus is on teaching the basic skills of living), and any purposeful activity so long as work or production is not the main purpose.

**History:** En. Sec. 2, Ch. 322, L. 1973; amd. Sec. 1, Ch. 333, L. 1974.

#### Amendments

The 1974 amendment inserted "severely" in the caption; substituted present subdivisions (1)(a) and (1)(b) for subdivisions reading "(a) who has a physical or mental disability, which constitutes a substantial handicap to employment, of such a nature that vocational rehabilita-

tion services may reasonably be expected to render him fit to engage in a gainful occupation consistent with his capacities and abilities; or (b) who, because of lack of social competence or mobility, experience, skills, training or other factors, is in need of vocational rehabilitation services in order to become fit to engage in a gainful occupation or to attain or maintain a maximum degree of self-support or self-care; or"; deleted a former

subdivision (1)(c) reading "for whom vocational rehabilitation services are necessary to determine rehabilitation potential"; and added subsections (6) and (7).

**41-818. Purchase of services for severely handicapped persons—determination of eligibility—register of qualified organizations—rules and regulations.** (1) The department may purchase, sheltered employment services from any sheltered workshop in Montana or work activity services from any work activity center within Montana for severely handicapped persons. The performance of and payment for such services shall be subject to post-audit review by the state auditor.

(2) The department shall maintain a register of nonprofit organizations which it and other appropriate state and federal agencies have inspected and certified as meeting required standards and as qualifying to serve the needs of such severely handicapped or disadvantaged persons. Eligibility of organizations to receive the funds specified by this act shall be based upon standards and criteria promulgated by the department.

(3) The department is authorized to promulgate such rules and regulations as it may deem necessary or proper to carry out the provisions of this section.

**History:** En. Sec. 3, Ch. 322, L. 1973; amd. Sec. 2, Ch. 333, L. 1974.

#### **Amendments**

The 1974 amendment substituted the first sentence of subsection (1) for one reading "The department may purchase, from any source, by contract, vocational rehabilitation services for handicapped persons, payments for such services to be made subject to procedures and fiscal controls approved by the department of administration"; deleted former subsection (2) which read "Notwithstanding any other provision of this act, when the department determines that a mentally retarded, severely handicapped or disadvantaged person can reasonably be expected to benefit from, or in his best interests reasonably requires extended sheltered employment or supervised work furnished by an approved nonprofit organization, the department is authorized to contract with such organization for the furnishing of such sheltered employment or supervised work to such mentally retarded, severely handicapped or disadvantaged person. The department is authorized to expend for or toward the cost of providing such sheltered employment or supervised work a sum or sums not to exceed one thousand five hundred

dollars (\$1,500) per annum for each such mentally retarded, severely handicapped or disadvantaged person in order to maintain him as a contributing and self-supporting member of society as an alternative to dependency; provided, that the department is authorized to expend in excess of one thousand five hundred dollars (\$1,500) per annum for each such mentally retarded, severely handicapped or disadvantaged person when federal or other funding becomes available to the state agency for such purpose and such additional expenditures may continue as long as the additional federal or other funding is or becomes available"; deleted former subsection (3) which read "The determination of eligibility for such service shall be made for each individual by the department"; redesignated the remaining subsections as (2) and (3); inserted "and other appropriate state and federal agencies" in the first sentence of subsection (2) after "organizations which it"; and made a minor change in phraseology.

#### **Effective Date**

Section 3 of Ch. 333, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 28, 1974.

**41-819. Use of federal funds.** Federal funds as may be available are appropriated to the department for use in administering the provisions of this act.

**History:** En. Sec. 4, Ch. 322, L. 1973.

## CHAPTER 9—STATE BOARD OF ARBITRATION AND CONCILIATION

Section 41-906. Decisions of board—report to governor.

## 41-901. (3052) State board of arbitration and conciliation.

**Cross-References**

Board abolished, sec. 82A-1010(2).

## 41-904. (3055) Settlement of controversies.

**Cross-References**

Professional Negotiations Act for Teachers, secs. 75-6115 et seq.

41-906. (3057) Decisions of board—report to governor. Upon the receipt of said application and after such notice, the board shall proceed as before provided, and render a written decision, which shall be open to the public inspection, shall be recorded upon the records of the board, [and] the board shall report as provided in section 2 [82-4002] of this act.

**History:** En. Sec. 3335, Pol. C. 1895; re-en. Sec. 1675, Rev. C. 1907; re-en. Sec. 3057, R. C. M. 1921; amd. Sec. 13, Ch. 93, L. 1969.

**Amendments**

The 1969 amendment substituted "the board shall report as provided in section 2 of this act" for "and published at the discretion of the same in an annual report to be made to the governor on or before the first day of December in each year."

**Compiler's Notes**

The compiler has inserted the bracketed word "and."

## CHAPTER 11—HOURS OF LABOR IN VARIOUS EMPLOYMENTS

Section 41-1120. Violation of preceding section a misdemeanor—penalty.

41-1123. Railway employees—hours of labor.

41-1135. Employment of persons under eighteen as bartenders forbidden.

41-1136. Penalty.

## 41-1118. (3076) Repealed.

**Repeal**

Section 41-1118 (Sec. 1, Ch. 108, L. 1913; Sec. 1, Ch. 18, L. 1917), relating to

hours of labor for female employees, was repealed by Sec. 2, Ch. 51, Laws 1971.

41-1120. (3078) Violation of preceding section a misdemeanor—penalty. Any employer who shall fail, neglect, or refuse to provide suitable seats, as provided in section 41-1119, or who shall permit or suffer any overseer, superintendent, or other agent of any such employer to violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined for each offense not less than fifty dollars (\$50) nor more than two hundred dollars (\$200), or be imprisoned in the county jail for a period of not less than ten (10) nor more than sixty (60) days, or both such fine and imprisonment.

**History:** En. Sec. 3, Ch. 108, L. 1913; amd. Sec. 3, Ch. 18, L. 1917; re-en. Sec. 3, Ch. 70, L. 1917; re-en. Sec. 3078, R. C. M. 1921; amd. Sec. 1, Ch. 51, L. 1971.

**Amendments**

The 1971 amendment deleted clauses relating to violations of section 41-1118 which appeared near the beginning of the section; and made minor changes in style.



**Repealing Clause**

Section 2 of Ch. 51, Laws 1971 read "Section 41-1118, R. C. M. 1947, is repealed."

**Effective Date**

Section 3 of Ch. 51, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 20, 1971.

**41-1121. (3079) Hours of labor for state and municipal governments, etc.****Overtime Computation**

Forty-hour work week was proper basis for determining hourly rate in computing overtime pay for state employees who

worked on twenty-four hours per day basis. *Glick v. State*, by and through Montana Dept. of Institutions, — M —, 509 P 2d 1, 5.

**41-1123. (3081) Railway employees—hours of labor.** On all lines of railroads or railways operated in whole or in part within this state, the time of labor of locomotive engineers, locomotive firemen, conductors, trainmen, operators, and agents acting as operators, employed in running or operating the locomotive engines or trains on or over such railroads or railways in this state, shall not at any time exceed twelve (12) consecutive hours, or to be on duty for more than sixteen (16) hours in the aggregate in any twenty-four (24) hour period. At least eight (8) hours shall be allowed them off duty before said engineers, firemen, conductors, trainmen, operators, and agents acting as operators, are again ordered or required to go on duty; provided, however, that nothing in this section shall be construed to allow any engineer, fireman, conductor, or trainman to desert his locomotive or train in case of accident, storms, wrecks, washouts, snow blockade, or any unavoidable delay arising from like causes, or to allow said engineer, fireman, conductor, or trainman to tie up any passenger or mail train between terminals.

**History:** En. Sec. 1, Ch. 5, L. 1907; Sec. 1741, Rev. C. 1907; re-en. Sec. 3081, R. C. M. 1921; amd. Sec. 1, Ch. 206, L. 1969.

**Constitutionality**

This section and section 41-1124, which purport to regulate maximum number of consecutive working hours of railroad employees, are unconstitutional under supremacy clause of United States constitution since they are in direct conflict with 45 U.S.C. §§ 61 to 64 which regulate same matter. *Union Pacific R. Co. v. Woodahl*, 308 F Supp 1002.

**Amendments**

The 1969 amendment deleted "steam" before "railroads" at the beginning of the first sentence and reduced maximum consecutive hours of labor from sixteen to twelve.

**41-1135. Employment of persons under eighteen as bartenders forbidden.** No person under the age of eighteen (18) years of age shall be employed as a bartender, waiter, or waitress whose duty is to serve customers purchasing liquors, beer or wines in any establishment which sells liquors, beer or wines at retail.

**History:** En. Sec. 1, Ch. 114, L. 1941; amd. Sec. 11, Ch. 240, L. 1971; amd. Sec. 17, Ch. 94, L. 1973.

**Amendments**

The 1971 amendment reduced the minimum age from 21 to 19 years.

The 1973 amendment reduced the minimum age from 19 to 18 years.

**41-1136. Penalty.** Any retail vendor of liquors, beer or wines who employs any such person under the age of eighteen (18) years is guilty of a misdemeanor.

**History:** En. Sec. 2, Ch. 114, L. 1941; amd. Sec. 12, Ch. 240, L. 1971; amd. Sec. 18, Ch. 94, L. 1973.

**Amendments**

The 1971 amendment reduced the specified age from 21 to 19 years.

The 1973 amendment reduced the specified age from 19 to 18 years.

**CHAPTER 12—APPRENTICESHIP COUNCIL AND CONTRACTS**

Section 41-1201. Apprenticeship council.

41-1202. Duties of state apprenticeship council.

**41-1201. Apprenticeship council.** (a) The governor of the state of Montana shall appoint an apprenticeship council, which shall be a part of the department of labor and industry, and shall consist of six (6) members, three (3) of whom shall be appointed from and be representative of active employers employing persons in recognized apprenticeable trades, and three (3) of whom shall be appointed from and be representative of active employee organizations whose members are employed in recognized apprenticeable trades. The terms of office of the members of the apprenticeship council first appointed by the governor of the state of Montana shall be as follows: One (1) representative each of employers and employees shall be appointed for one (1) year, two (2) years and three (3) years respectively. After the expiration of the original terms, each member shall be appointed by the governor of the state of Montana for a term of three (3) years. Each member shall hold office until his successor is appointed and has qualified, and any vacancy shall be filled by appointment by the governor of the state of Montana for the unexpired portion of the term. The commissioner of labor and industry, the state official who has been designated by the state board for vocational education as being in charge of trade and industrial education and the state official who has immediate charge of the state public employment service shall be ex officio members of said council without vote. The council shall elect a chairman and vice-chairman from its voting membership, one (1) of which shall be a representative of employers and one (1) shall be a representative of employees, and each shall hold office for a term of one (1) year and until his successor is elected.

(b) to (d). \* \* \* [Same as parent volume.]

(e) The commissioner of labor and industry may, subject to the approval of the appointed members of the council, appoint a director of apprenticeship and such other clerical, technical and professional staff as shall be necessary to carry out the provisions of this act. The director of apprenticeship shall serve as the secretary of the council, without a vote.

**History:** En. Sec. 1, Ch. 149, L. 1941; amd. Sec. 1, Ch. 99, L. 1947; amd. Sec. 1, Ch. 183, L. 1957; amd. Sec. 1, Ch. 160, L. 1963.

of which see parent volume; and added subsection (e).

**Cross-References**

Council abolished and functions transferred, sec. 82A-1002(2).

**Amendment**

The 1963 amendment completely re-wrote subsection (a), for previous version

**41-1202. Duties of state apprenticeship council.** The state apprenticeship council by a majority vote, shall:

(1) encourage and promote the making of apprenticeship agreements conforming to the standards established by or in accordance with this act;

(2) register such apprenticeship agreements as are in the best interests of the apprenticeship and conform to the standards established by or in accordance with this act;

(3) keep a record of apprenticeship agreements and upon performance thereof issue certificates of completion of apprenticeship;

(4) terminate or cancel any apprenticeship agreements in accordance with the provisions of such agreements; and who

(5) may act to bring about the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure.

Related and supplemental instruction for apprentices, co-ordination of instruction with job experiences, and the selection and training of teachers and co-ordinators for such instruction shall be the responsibility of state and local boards responsible for vocational education.

**History:** En. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963.

sentence which read, "The voting members of the apprenticeship council are authorized to appoint such other personnel as may be necessary to aid the apprenticeship council in the execution of their functions under this act."

**Amendment**

The 1963 amendment deleted a final

**CHAPTER 13—PAYMENT OF WAGES AND PROTECTION OF DISCHARGED EMPLOYEES**

Section 41-1302. Penalty for failure to pay wages at times specified in law.

41-1303. Employees separated from employment before payday—wages, when payable.

41-1304. Period within which employee may recover penalties.

41-1314.1. Enforcement.

41-1314.2. Authority to take wage assignments.

41-1314.3. Disposition of wages.

41-1314.4. Court enforcement of commissioner's determination.

41-1325. [Transferred from Title 94.]

**41-1302. (3085) Penalty for failure to pay wages at times specified in law.** Any employer, as such employer is defined in this act, who fails to pay any of his employees, as provided in the preceding or following sections, or violates any other provision of this act, shall be guilty of a misdemeanor. A penalty shall also be assessed against and paid by such employer and become due such employee as follows:

A sum equivalent to the fixed amount of five (5%) per cent of the wages due and unpaid, shall be assessed for each day, except Sundays and legal holidays, upon which such failure continues after the day upon which such wages were due, except that such failure shall not be deemed to continue more than twenty (20) days after the date such wages were due.

It shall be the duty of the commissioner of labor to inquire diligently for any violations of this act, and to institute actions for the col-



lection of unpaid wages and for the penalties provided for herein, in such cases as he may deem proper, and to enforce generally the provisions of this act.

Nothing herein contained shall be construed to limit the authority of the county attorney of any county of the state of Montana to prosecute actions, both civil and criminal, for such violations of this act as may come to his knowledge, or to enforce the provisions hereof independently and without specific direction of the commissioner of labor.

**History:** En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R. C. M. 1921; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967.

#### Amendments

The 1967 amendment extended the application of the first sentence to violations of the entire act; substituted the present second sentence for "A penalty shall also attach to such employer and

become due such employee as follows: A sum equivalent to a penalty of five (5%) per cent of the wages due and not paid, as herein provided, as liquidated damages, and such penalty shall attach and suit may be brought in any court of competent jurisdiction to recover the same and the wages due"; inserted "for the collection of unpaid wages and for the" in the next to last paragraph; and made minor changes in phraseology.

**41-1303. (3086) Employees separated from employment before pay-day—wages, when payable.** Whenever any employee is separated from the employ of any such employer, then all the unpaid wages of such employee shall become due and payable within three (3) days, either through the regular pay channels or by mail if requested by the employee; provided however, that where an employer's payroll checks originate at an office outside the state of Montana the time provided herein for payment of wages shall be extended for three (3) additional days.

**History:** En. Sec. 3, Ch. 11, L. 1919; amd. Sec. 1, Ch. 66, L. 1921; re-en. Sec. 3086, R. C. M. 1921; amd. Sec. 3, Ch. 169, L. 1941; amd. Sec. 2, Ch. 40, L. 1967.

#### Amendments

The 1967 amendment rewrote this section. For previous text, see parent volume.

**41-1304. (3087) Period within which employee may recover penalties.** Any employee may recover all such penalties as are provided for the violation of section 41-1302, which have accrued to him, at any time within eighteen (18) months succeeding such default or delay in the payment of such wages.

**History:** En. Sec. 4, Ch. 11, L. 1919; re-en. Sec. 3087, R. C. M. 1921; amd. Sec. 1, Ch. 234, L. 1973.

#### Amendments

The 1973 amendment extended the time for recovery of penalties from six months to eighteen months.

**41-1306. (3089) Judgment for wages shall include attorney's fee.**

#### Failure To Include in Memorandum

Award of attorney fees was proper in employee's action to recover for services rendered as bookkeeper under an implied contract, even though not included in

plaintiff's memorandum of costs, since the award was made directly to attorney. Cartwright v. Joyce, 155 M 478, 473 P 2d 515.

**41-1314.1. Enforcement.** The commissioner or his authorized representatives are empowered to enter and inspect such places, question such employees, and investigate such facts, conditions, or matters as they may deem appropriate, to determine whether any person has violated any pro-

vision of this act or any rule or regulation issued hereunder or which may aid in the enforcement of the provisions of this act.

The commissioner or his authorized representatives shall have power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and to take depositions and affidavits in any proceeding before the commissioner.

**History:** En. Sec. 3, Ch. 40, L. 1967.

**Title of Act**

An act amending sections 41-1302 and 41-1303, R. C. M. 1947, relating to time for payment of wages; authorizing the

commissioner of labor to investigate violations; and authorizing said commissioner to accept assignments of wage claims and institute proceedings to enforce such claims.

**41-1314.2. Authority to take wage assignments.** Whenever the commissioner determines that one or more employees have claims for unpaid wages, he shall, upon the written request of the employee, take an assignment of the claim in trust for such employee, and may maintain any proceeding appropriate to enforce the claim, including liquidated damages pursuant to this act. With the written consent of the assignor, the commissioner may settle or adjust any claim assigned pursuant to this section.

Any judgment for the plaintiff in a proceeding pursuant to this act shall include all costs reasonably incurred in connection with the proceeding, including attorneys' fees. If the proceeding is maintained by the commissioner, no court costs or fees shall be required of him, nor shall he be required to furnish any bond or other security that might otherwise be required in connection with any phase of the proceeding.

The commissioner is authorized to issue, amend, and enforce rules and regulations for the purpose of carrying out the provisions of the act.

**History:** En. Sec. 4, Ch. 40, L. 1967.

**Compromise Not a Defense**

Employer may not compromise minimum wage claims with employees and then establish that compromise as a defense to proceedings seeking enforcement of minimum wage laws; failure of com-

missioner to obtain assignments of wage claims from all employees was not fatal to his authority to act on their behalf, and nonassigned claims could not be settled by employees themselves. State ex rel. Neiss v. District Court, Thirteenth Judicial Dist., Yellowstone County, — M —, 511 P 2d 979.

**41-1314.3. Disposition of wages.** (1) The commissioner of labor and industry shall deposit wages collected by him under Title 41, chapters 13 and 23, R. C. M. 1947, into the agency fund and shall attempt to make payment of wages to the entitled person. Wages deposited into the agency fund are not interest bearing.

(2) Wages collected by the commissioner of labor and industry remaining unclaimed for a period of more than two (2) years from the date of collection shall be forfeited to the state general fund.

**History:** En. 41-1314.3 by Sec. 1, Ch. 164, L. 1974.

**Title of Act**

An act providing for the disposition of wages collected by the commissioner of labor and industry.

**41-1314.4. Court enforcement of commissioner's determination.** A determination by the commissioner of labor and industry made after a hearing

as provided for in Title 41, chapters 13 and 23, R. C. M. 1947, may be enforced by application by the commissioner to a district court for an order or judgment enforcing the determination, if the time provided to initiate judicial review by the employer has passed. The commissioner shall apply to the district court where the employer has its principal place of business, or in the first judicial district of the state. A proceeding under this section is not a review of the validity of the commissioner's determination.

**History:** En. 41-1314.4 by Sec. 1, Ch. 197, L. 1974.

**Title of Act**

An act to provide for the enforcement

of determinations made by the commissioner of labor and industry as provided for in Title 41, Chapters 13 and 23, R. C. M. 1947.

**41-1325. [Transferred from Title 94.]**

**Compiler's Notes**

This section was originally numbered 94-3555. Section 29, Ch. 513, Laws of 1973, renumbered it to appear in this

title. Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-3555.

**CHAPTER 14—EMPLOYMENT AGENCIES, REGULATION**

- Section 41-1417. Short title.  
 41-1418. Definitions.  
 41-1419. Records to be kept—contents—examination by director.  
 41-1420. Contract—contents—applicant entitled to copy.  
 41-1421. Director's approval required before using contract—no fee for referral to state employment office or hiring hall.  
 41-1422. Bona fide request from employer required before sending applicant for interview.  
 41-1423. Administration by director—rules and regulations—powers.  
 41-1424. Conducting business without license a misdemeanor.  
 41-1425. Bond of licensee—cash deposit.  
 41-1426. Application for license—contents.  
 41-1427. Expiration of license.  
 41-1428. Director's consent necessary before transferring license—changes in management.  
 41-1429. Grounds for denial, suspension, or revocation of license.  
 41-1430. License fees.  
 41-1431. When can agency charge fee from applicant.  
 41-1432. Return of excessive fees.  
 41-1433. Additional regulatory rules.  
 41-1434. Reference to prosecuting officials for enforcement.  
 41-1435. Written assurance of discontinuance.  
 41-1436. Civil penalty for violating court order.  
 41-1437. Jurisdiction over nonresidents.  
 41-1438. Provisions exclusive—authority of political subdivisions not affected—disposition of license fees.

**41-1401 to 41-1416. (4157 to 4172) Repealed.**

**Repeal**

Sections 41-1401 to 41-1416 (Secs. 1 to 16, Ch. 225, L. 1919), relating to employ-

ment agencies, were repealed by Sec. 23, Ch. 430, Laws 1971.

**41-1417. Short title.** This act shall be known and cited as "The Employment Agency Act."

**History:** En. Sec. 1, Ch. 430, L. 1971.

**Title of Act**

An act replacing chapter 14, Title 41,

R. C. M. 1947, concerning the regulation of private employment agencies including provision for penalties for the violation of such regulations.



**41-1418. Definitions.** Unless a different meaning is clearly required by the context, the following words and phrases, as hereinafter used in this chapter, shall have the following meanings:

(1) "Employment agency" is synonymous with "agency" and shall mean any business in which any part of the business's gross or net income is derived from a fee received from applicants, and in which any of the following activities are engaged in:

(a) The offering, promising, procuring or attempting to procure employment for applicants; or

(b) The giving of information regarding where and from whom employment may be obtained.

In addition, the term "employment agency" shall mean and include any person, bureau, organization or school which for profit, by advertisement or otherwise; offers, as one of its main objects or purposes, to procure employment for any person who pays for its services, or which collects tuition, or charges for service of any nature, where the main object of the person paying the same is to secure employment. The term "employment agency" shall not include labor union organizations, temporary service contractors proprietary schools, or the Montana state employment agency.

(2) "Temporary service contractors" shall mean any person, firm, association, or corporation conducting a business which consists of employing individuals directly for the purpose of furnishing such individuals on a part-time or temporary basis to others.

(3) "Employer" means any person, firm, corporation, partnership, or association employing or seeking to enter into an arrangement to employ a person through the medium or service of an employment agency.

(4) "Applicant," except when used to describe an applicant for an employment agency license, means any person, whether employed or unemployed, seeking or entering into any arrangement for his employment or change of his employment through the medium or service of an employment agency.

(5) "Person" includes an individual, a firm, a corporation, partnership or association.

(6) "Director" shall mean the commissioner of the department of labor and industries.

History: En. Sec. 2, Ch. 430, L. 1971.

**41-1419. Records to be kept — contents — examination by director.** Each employment agency shall keep records of all services rendered employers and applicants. These records shall contain the name and address of the employer by whom the services were solicited; the name and address of the applicant; kind of position ordered by the employer; kind of position accepted by the applicant; probable duration of the employment, if known; rate of wage or salary to be paid the applicant; amount of the employment agency's fee; dates and amounts of refund if any, and reason for such refund; and the contract agreed to between the agency and applicant.

The director shall have authority to demand and to examine, at the employment agency's regular place of business, all books, documents, and records in its possession for inspection. Unless otherwise provided by rules or regulations adopted by the director, such records shall be maintained for a period of three (3) years from the date in which they are made.

History: En. Sec. 3, Ch. 430, L. 1971.

**41-1420. Contract—contents—applicant entitled to copy.** An employment agency shall provide each applicant with a copy of the contract between the applicant and employment agency. Such contract shall contain the following:

(1) The name, address, and telephone number of the employment agency;

(2) Trade name if any;

(3) The date of the contract;

(4) The name of the applicant;

(5) The amount of the fee to be charged the applicant;

(6) A notice in eight-point bold face type or larger directly above the space reserved in the contract for the signature of the buyer. The caption, "NOTICE TO APPLICANT — READ BEFORE SIGNING" shall precede the body of the notice and shall be in ten-point bold face type or larger. The notice shall read as follows:

"This is a contract. If you accept employment with any employer through (name of employment agency) you will be liable for the payment of the fee as set out above. Do not sign this contract before you read it or if any spaces intended for the agreed terms are left blank. You are entitled to a copy of this contract at the time you sign it."

History: En. Sec. 4, Ch. 430, L. 1971.

**41-1421. Director's approval required before using contract—no fee for referral to state employment office or hiring hall.** Prior to using any contract in the transaction of its business with applicants, each employment agency shall obtain the director's approval for the use of such contract. The director shall disapprove any proposed contract which either tends to be or is vague, deceitful, misrepresentative or attempts to charge an unreasonable fee or is in violation of this act. No fee shall be charged an applicant referred to a state employment office or any organization having exclusive hiring hall procedures as provided in the National Labor Relations Act.

History: En. Sec. 5, Ch. 430, L. 1971.

**41-1422. Bona fide request from employer required before sending applicant for interview.** No employment agency shall send any applicant on an interview with a prospective employer without first having obtained, either orally or in writing, a bona fide request from such employer for the interview.

History: En. Sec. 6, Ch. 430, L. 1971.

**41-1423. Administration by director—rules and regulations—powers.**

[1] The director shall administer the provisions of this act and shall issue from time to time reasonable rules and regulations for enforcing and carrying out the provisions and purposes of this act.

(2) The director shall have power to compel the attendance of witnesses by the issuance of subpoenas, to administer oaths, and to take testimony and proofs concerning all matters pertaining to the administration of this act.

(3) The director shall have supervisory and investigative authority over all employment agencies. Upon receiving a complaint against any employment agency, the director shall have the right to examine all books, documents, or records in its possession. In addition, the director may examine the office or offices where business is or shall be conducted by such agency.

History: En. Sec. 7, Ch. 430, L. 1971.

**41-1424. Conducting business without license a misdemeanor.** It shall be a misdemeanor for any person to conduct an employment agency business in this state unless he has an employment agency license issued pursuant to the provisions of this act.

History: En. Sec. 8, Ch. 430, L. 1971.

**41-1425. Bond of licensee—cash deposit.** Before conducting any business as an employment agency each licensee shall file with the director a surety bond in the sum of two thousand dollars (\$2,000) running to the state of Montana, for the benefit of any person injured or damaged as a result of any violation by the licensee or his agent of any of the provisions of this act or of any rule or regulation adopted by the director pursuant to section 7 [41-1423] (1) of this act.

In lieu of the surety bond required by this section the license applicant may file with the director a cash deposit or other negotiable security acceptable to the director: provided, however, if the license applicant has filed a cash deposit, the director shall deposit such funds in a special trust savings account in a commercial bank, mutual savings bank, or saving and loan association and shall pay annually to the depositor the interest derived from such account.

History: En. Sec. 9, Ch. 430, L. 1971.

**41-1426. Application for license—contents.** (1) Every applicant for an employment agency's license or a renewal thereof shall file with the director a written application stating the name and address of the applicant; the street and number of the building in which the business of the employment agency is to be conducted; the name of the person who is to have the general management of the office; the name under which the business of the office is to be carried on; whether or not the applicant is pecuniarily interested in the business to be carried on under the license; shall be signed by the applicant and sworn to before a notary public; and shall identify anyone holding over twenty per cent (20%) interest in the agency. If the applicant is a corporation, the application shall state the names and addresses of the officers and directors of



the corporation, and shall be signed and sworn to by the president and secretary thereof. If the applicant is a partnership, the application shall also state the names and addresses of all partners therein, and shall be signed and sworn to by all of them. The application shall also state whether or not the applicant is, at the time of making the application, or has at any previous time been engaged in or interested in or employed by anyone engaged in the business of an employment agency.

(2) All applications for employment agency licenses shall be accompanied by a copy of the form of contract to be used between the agency and the applicant.

**History:** En. Sec. 10, Ch. 430, L. 1971.

**41-1427. Expiration of license.** An employment agency license shall expire June 30.

**History:** En. Sec. 11, Ch. 430, L. 1971.

**41-1428. Director's consent necessary before transferring license—changes in management.** No license granted pursuant to this act shall be transferable without the consent of the director. No employment agency shall permit any person not mentioned in the license application to become connected with the business as an owner, member, officer, or director without the consent of the director. Consent may be withheld for any reason for which an original application for a license might have been rejected, if the person in question had been mentioned therein.

**History:** En. Sec. 12, Ch. 430, L. 1971.

**41-1429. Grounds for denial, suspension, or revocation of license.** The director may by order deny, suspend or revoke the license of any employment agency if he finds that the applicant or licensee:

(1) Was previously the holder of a license issued under this act, which was revoked for cause and never reissued by the director, or which license was suspended for cause and the terms of the suspension have not been fulfilled;

(2) Has been found guilty of any felony within the past five (5) years involving moral turpitude, or for any misdemeanor concerning fraud or conversion, or suffering any judgment in any civil action involving willful fraud, misrepresentation or conversion;

(3) Has made a false statement of a material fact in his application or in any data attached thereto;

(4) Has violated any provisions of this act, or failed to comply with any rule or regulation issued by the director pursuant to this act.

**History:** En. Sec. 13, Ch. 430, L. 1971.

**41-1430. License fees.** The following fees shall be charged by the director to those parties licensed as employment agencies: original applications, one hundred dollars (\$100); renewal per year, one hundred dollars (\$100); branch license, both original and renewal, one hundred dollars (\$100); transfer of license, twenty-five dollars (\$25); approval of amended or new contracts, fifteen dollars (\$15) per contract.

**History:** En. Sec. 14, Ch. 430, L. 1971.

**41-1431. When can agency charge fee from applicant.** No employment agency shall charge or accept a fee or other consideration from an applicant without complying with the terms of a written contract as specified in section 4 [41-1420] of this act, and then only after such agency has been responsible for referring such job applicant to an employer or such employer to a job applicant and where as a result thereof such job applicant has been employed by such employer.

**History:** En. Sec. 15, Ch. 430, L. 1971.

**41-1432. Return of excessive fees.** Any employment agency which collects, receives, or retains a fee or other payment contrary to the provisions of this act or to the rules or regulations adopted pursuant to this act shall return the excessive portion of the fee within seven (7) days after receiving a demand therefor from the director.

**History:** En. Sec. 16, Ch. 430, L. 1971.

**41-1433. Additional regulatory rules.** In addition to the other provisions of this act the following rules shall govern each and every employment agency:

(1) Every license or a verified copy thereof shall be displayed in a conspicuous place in each office of the employment agency;

(2) No fee shall be solicited or accepted as an application or registration fee by any employment agency solely for the purpose of being registered as an applicant for employment;

(3) No licensee or agent of the licensee shall solicit, persuade, or induce an employee to leave any employment in which the licensee or agent of the licensee has placed the employee; nor shall any licensee or agent of the licensee persuade or induce or solicit any employer to discharge any employee;

(4) No employment agency shall knowingly cause to be printed or published a false or fraudulent notice or advertisement for obtaining work or employment. All advertising by a licensee shall signify that it is an employment agency solicitation;

(5) No licensee shall refer an applicant to an employer where there is a strike or lockout at the place of proposed employment, if such licensee has knowledge that such condition exists;

(6) No licensee or agent of a licensee shall directly or indirectly split, divide, or share with an employer any fee, charge, or compensation received from any applicant who has obtained employment with such employer or with any other person connected with the business of such employer;

(7) When an applicant is referred to the same position by two licensees, the fee shall be paid to the licensee who first contacted the applicant concerning the specific opening: provided, that he has given the name of the employer to the applicant and has arranged an interview or submitted a resume to the employer within ten (10) days of such contract.

**History:** En. Sec. 17, Ch. 430, L. 1971.

**41-1434. Reference to prosecuting officials for enforcement.** The director may refer such evidence as may be available to him concerning

violations of this act or of any rule or regulation adopted hereunder to the attorney general or the prosecuting attorney of the county wherein the alleged violation arose, who may, in their discretion, with or without such a reference, in addition to any other action they might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice prohibited by this act.

**History:** En. Sec. 18, Ch. 430, L. 1971.

**41-1435. Written assurance of discontinuance.** In the enforcement of this act, the attorney general and/or any said prosecuting attorney may accept an assurance of discontinuance from any person deemed in violation of any provisions of this act. Any such assurance shall be in writing and shall be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business.

**History:** En. Sec. 19, Ch. 430, L. 1971.

**41-1436. Civil penalty for violating court order.** Any person who violates the terms of any court order or temporary or permanent injunction issued pursuant to this act, shall forfeit and pay a civil penalty of not more than two thousand dollars (\$2,000). For the purpose of this section the court issuing any injunction shall retain continuing jurisdiction and in such cases the attorney general and/or the prosecuting attorney acting in the name of the state may petition for the recovery of civil penalties.

**History:** En. Sec. 20, Ch. 430, L. 1971.

**41-1437. Jurisdiction over nonresidents.** Personal service of any process in an action under this act may be made upon any person outside the state if such person has engaged in conduct in violation of this act which conduct has had impact in this state which this act reprehends. Such person shall be deemed to have thereby submitted himself to the jurisdiction of the courts of this state.

**History:** En. Sec. 21, Ch. 430, L. 1971.

**41-1438. Provisions exclusive—authority of political subdivisions not affected—disposition of license fees.** (1) The provisions of this act relating to the regulation of private employment agencies shall be exclusive.

(2) This act shall not be construed to affect or reduce the authority of any political subdivision of the state of Montana to provide for the licensing of private employment agencies solely for revenue purposes.

(3) All license fees shall revert to department of labor and industry to be used for administration of this act.

**History:** En. Sec. 22, Ch. 430, L. 1971.

**Repealing Clause**

Section 23 of Ch. 430, Laws 1971 read "Chapter 14, Title 41, R. C. M. 1947, is hereby repealed."



**CHAPTER 16—DEPARTMENT OF LABOR AND INDUSTRY**

Section 41-1603. Commissioner of labor and industry—term—salary—oath.

**41-1601. Department of labor and industry created.****Cross-References**

Department abolished and functions transferred, sec. 82A-1002(1).

**41-1603. Commissioner of labor and industry—term—salary—oath.**

The term of office of the commissioner of labor and industry shall be four (4) years and until his successor is appointed and qualified. The commissioner shall receive an annual salary in such amount as may be specified by the legislative assembly in the appropriation to the department of labor and industry. If the legislative assembly does not specify the maximum salary of the commissioner, any increase in the salary of the commissioner must be approved by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. The salary shall be payable monthly. Before entering on the duties of his office, he must take and subscribe to the oath of office prescribed by the Montana constitution.

**History:** En. Sec. 3, Ch. 177, L. 1951; amd. Sec. 1, Ch. 27, L. 1957; amd. Sec. 2, Ch. 225, L. 1963; amd. Sec. 20, Ch. 177, L. 1965; amd. Sec. 2, Ch. 237, L. 1967; amd. Sec. 19, Ch. 100, L. 1973.

**Amendments**

The 1963 amendment substituted a provision for a maximum salary of \$7,500 for a provision fixing the salary at \$6,000.

The 1965 amendment deleted an opening clause relating to the term of office of the commissioner appointed in 1951; deleted "appointed thereafter" after "commissioner of labor and industry" in the first sentence; and deleted "and execute an official bond in the amount of one thou-

sand dollars (\$1,000)" from the end of the section.

The 1967 amendment substituted the second, third and fourth sentences for a provision in the former section fixing the maximum salary at \$7,500; and made minor changes in punctuation and phraseology.

The 1973 amendment deleted "section 1, article XIX of" before "the Montana constitution" at the end of the section.

**Cross-References**

Bonds of state officers and employees, sec. 6-105 et seq.

Commissioner continuing as head of new department, sec. 82A-1001.

**41-1607, 41-1608. Repealed.****Repeal**

Sections 41-1607 and 41-1608 (Secs. 9, 10, Ch. 177, L. 1951; Sec. 12, Ch. 80, L. 1961), relating to the annual report of the

department of labor and industry were repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

**41-1609. Repealed.****Repeal**

Section 41-1609 (Sec. 12, Ch. 177, L. 1951), relating to legislative intent in

separating the departments of agriculture and labor and industry, was repealed by Sec. 58, Ch. 100, Laws 1973.

## CHAPTER 17—SAFETY CODES

- Section 41-1708. Short title.  
 41-1709. Definitions.  
 41-1710. Employers to furnish and require safety devices and practices.  
 41-1711. Employer's duty to provide and maintain safe place of employment.  
 41-1712. Removal or refusal to use safety devices prohibited.  
 41-1713. Board's powers—duty to establish department of safety under a safety director—rule-making power—subpoena and other powers.  
 41-1714. Compelling witnesses to appear in response to subpoena—contempt.  
 41-1715. Board's power to prescribe safety devices and fix and order safety standards.  
 41-1716. Notice of hearing on rules and codes.  
 41-1717. Order directing additions, repairs, and improvements.  
 41-1718. Notice of violation of safety code, order or rule—penalties for violations—hearings—injunction authorized.  
 41-1719. Time allowed for compliance with order.  
 41-1720. Order of closure or for cessation of work where place of employment an immediate menace to life or safety.  
 41-1721. Judicial review of board's orders, rules or decisions.  
 41-1722. Application for rehearing of order, decision, or rule of board.  
 41-1723. Application for rehearing—contents—waiver—copies to adverse parties—procedure where no adverse parties.  
 41-1724. Resolution of issues on rehearing—notice—disposition.  
 41-1725. Periodic inspections of hazardous places of employment—report.  
 41-1726. Workmen to notify employers of safety violations—complaint to board—investigation.  
 41-1727. Code-making power.  
 41-1728. Variations.  
 41-1729. General research and review powers of board—Power to appoint advisers.  
 41-1730. Violation of safety provision—misdemeanor.  
 41-1731. Public contractors subject to act.  
 41-1732. Effect on existing structures and equipment.  
 41-1733. Occupational health hazards.

## 41-1701 to 41-1707. Repealed.

**Repeal**

Sections 41-1701 to 41-1707 (Secs. 1 to 6, 8, Ch. 193, L. 1951), relating to safety codes of the industrial accident board,

were repealed by Sec. 30, Ch. 341, Laws 1969. For present provisions see sec. 41-1708 et seq.

41-1708. **Short title.** This act may be cited as the "Montana Safety Act."

**History:** En. Sec. 1, Ch. 341, L. 1969.

**Title of Act**

An act to provide a safety code for the state of Montana, establishing a department of safety, providing for a safety director to be appointed by the industrial accident board, providing that the industrial accident board have supervision over

every place of employment and full power to enforce all laws and orders concerning safety in places of employment, prescribing methods for enforcement and administration of this act; amending section 92-101, R. C. M. 1947; and repealing sections 41-1701 through 41-1707, 92-1201 through 92-1210 and 92-1214 through 92-1222, R. C. M. 1947.

41-1709. **Definitions.** Unless context requires otherwise, in this act:

(1) "Board" means the industrial accident board of the state of Montana.

(2) "Employer" is defined as in section 92-410, R. C. M. 1947.

(3) "Code" means a standard body of rules for safety formulated, adopted and issued by the board under the provisions of this act.

(4) "Employee" and "workmen" are defined as in section 92-411, R. C. M. 1947.

(5) "Amendment" means such modification or change in a code as shall be intended to be of universal or general application.

(6) "Variation" means a special, limited modification or change in the code which is applicable only to the particular place of employment of the employer or person petitioning for such modification or change.

**History:** En. Sec. 2, Ch. 341, L. 1969.

#### Cross-References

#### Compiler's Notes

Board abolished and functions transferred, sec. 82A-1005(1).

Section 92-410, referred to in subdivision (2), was repealed by Sec. 2, Ch. 154, Laws 1973. For new law, see sec. 92-410.1.

**41-1710. Employers to furnish and require safety devices and practices.** Every employer shall furnish a place of employment which is safe for employees therein, and shall furnish and use, and require the use of, such safety devices and safeguards, and shall adopt and use such practices, means, methods, operations and processes as are reasonably adequate to render the place of employment safe, and shall do every other thing reasonably necessary to protect the life and safety of employees.

**History:** En. Sec. 3, Ch. 341, L. 1969.

#### Liability for Violation

Employee of general contractor expanding paper company's facilities was properly denied right to introduce testimony, in suit against paper company, respecting minimum safety standards for construction industry as promulgated by state in-

dustrial accident board since paper company's right to oversee and co-ordinate work of independent contractors did not impose duty on company to ensure that contractor's work would be done in compliance with all various safety codes. *Hackley v. Waldorf-Horner Paper Products Co.*, 149 M 286, 425 P 2d 712.

**41-1711. Employer's duty to provide and maintain safe place of employment.** An employer who is the owner or lessee of any real property in this state shall not construct or cause to be constructed or maintained any place of employment that is unsafe.

Every employer who is the owner of a place of employment or lessee thereof, shall repair, and maintain the same as to render it safe.

**History:** En. Sec. 4, Ch. 341, L. 1969.

**41-1712. Removal or refusal to use safety devices prohibited.** No person shall remove, displace, damage, destroy or carry off or refuse to use any safety device or safeguard furnished and provided for his use in any employment or place of employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for the protection of any employee in such employment or place of employment, or fail to do any other thing reasonably necessary to protect the life and safety of such employees.

**History:** En. Sec. 5, Ch. 341, L. 1969.



**41-1713. Board's powers—duty to establish department of safety under a safety director—rule-making power—subpoena and other powers.** In the administration of this act the board:

(1) Is vested with full power and jurisdiction over, and shall have such supervision of, every employment and place of employment in this state as may be necessary to enforce and administer all laws and all lawful orders requiring such employment and places of employment to be safe and requiring the protection of the life and safety of every employee in such employment or place of employment.

(2) Shall establish a department of safety under the supervision of a safety director, to be appointed by the board, to carry out the provisions of this act. The safety director shall be a person with at least two (2) years' experience or training in the field of industrial safety.

(3) May make, establish, promulgate and enforce all necessary and reasonable rules and provisions for the purpose of carrying this act into effect and in reference to the investigation of all violations of this act and fix and set the time and place for all hearings which may be necessary or expedient for the purpose of carrying the provisions of this act into effect.

(4) May on its own motion or at the request of others, subpoena witnesses, administer oaths, take depositions and fix the fees and mileage of witnesses and compel the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of this state, and the board shall provide for defraying the expenses thereof.

**History:** En. Sec. 6, Ch. 341, L. 1969.

**Cross-References**

Industrial accident board abolished and functions transferred, sec. 82A-1005 (1).

**41-1714. Compelling witnesses to appear in response to subpoena—contempt.** (1) The board or any member thereof, before whom testimony is to be given or produced, in the case of refusal of any witness to attend or testify or produce any papers required by such subpoena, may in applying to the district court in and for the county in which the proceeding is pending show that the witness has been subpoenaed in the manner prescribed and the witness has failed or refused to attend or produce the papers required by the subpoena or has refused to answer questions propounded to him in the course of such proceeding, and ask the court to compel the witness to attend and testify or produce such papers before the board.

(2) The court, upon such application, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court then and there to show cause why he has not attended and testified or produced the papers before the board or any member thereof.

(3) A copy of the order shall be served upon the witness.

(4) If it is apparent to the court that the subpoena was regularly issued by the board or member thereof, the court thereupon shall enter

an order that the witness appear before the board or member thereof at a time and place to be fixed in such order, and testify and produce the required papers and upon failure to obey the order the witness shall be dealt with as for contempt of court.

**History:** En. Sec. 7, Ch. 341, L. 1969.

**41-1715. Board's power to prescribe safety devices and fix and order safety standards.** The board may, after hearing had upon its own motion or upon complaint, by safety orders, rules or otherwise:

(1) Declare and prescribe what safety devices, safeguards or other means or methods of protection are well adapted to render the employees of every employment and place of employment safe as required by law.

(2) Fix reasonable standards and prescribe, modify and enforce such reasonable orders for the adoption, installation, use, maintenance and operation of safety devices, safeguards and other means or methods of protection, to be as nearly uniform as possible, as may be necessary to carry out all laws and lawful orders relative to the protection of the life and safety of the employees and places of employment.

(3) Fix and order such reasonable standards for the construction, repair and maintenance of places of employment and equipment as shall render them safe.

(4) Require the performance of any other act which the protection of the life and safety of employees in employments and places of employment may demand.

**History:** En. Sec. 8, Ch. 341, L. 1969.

#### DECISIONS UNDER FORMER LAW

##### **Employee of Independent Contractor**

Neither city nor its supervising engineer had duty running to employee of independent contractor doing work for city to see that contractor complied with

minimum safety standards as it had specifically agreed to do. *Wells v. Stanley J. Thill & Associates, Inc.*, 153 M 28, 452 P 2d 1015.

**41-1716. Notice of hearing on rules and codes.** Upon the fixing of a time and place for the holding of a public hearing for the purpose of considering and issuing rules and codes, as authorized in this act, the board shall cause a notice of the hearing to be published in one or more daily newspapers of general circulation published in this state and in such other papers of general circulation in this state as the board may deem expedient. The notice shall contain a brief statement of the time, place and purpose of the hearing. No defect or inaccuracy in the notice or in the publication thereof shall invalidate any rule or code issued or adopted by the board after the hearing.

**History:** En. Sec. 9, Ch. 341, L. 1969.

**41-1717. Order directing additions, repairs, and improvements.** Whenever the board, after a hearing had upon its own motion or upon complaint, finds that an employment or place of employment is not safe, or that the practices or methods or operations or processes employed

or used in connection therewith are unsafe, or do not afford adequate protection to the life and safety of the employees in such employments and place of employment, the board shall make and enter and serve such order relative thereto as may be necessary to render such employment or place of employment safe and protect the life and safety of employees in such employment and places of employment. The board may in the order direct that such additions, repairs, improvements or changes be made and such safety devices and safeguards be furnished, provided and used, as are reasonably required to render such employment or places of employment safe, in the manner and within the time specified in the order.

**History:** En. Sec. 10, Ch. 341, L. 1969.

**41-1718. Notice of violation of safety code, order or rule—penalties for violations—hearings—injunction authorized.** (1) The board or authorized representative thereof with the approval of the board, or the safety director, upon finding any violation of any duly promulgated safety code, order or rule involving failure to install or maintain any safety appliance, device or safeguard required by such safety order, code or rule, may prohibit the further use of the machine, equipment, or apparatus constituting such violation, and when such use is prohibited shall post notice in an appropriate place in plain view of any person likely to use the same calling attention to the unsafe condition, defect, or lack of safeguard and the fact that the further use thereof is prohibited.

(2) The notice required by subsection (1) of this section shall not be removed until the required safety appliance, device or safeguard complies with the requirement of the safety order or safety code.

(3) Every person who, after the notice required by subsection (1) of this section is posted as provided in that subsection, uses or operates any place of employment, machine, device, apparatus or equipment referred to in subsection (1) of this section before it is made safe and the required safeguards or safety appliances or devices are provided, or who defaces or destroys or removes any notice required by subsection (1) of this section without the authority of the board, or who fails or refuses to file a report of accident as required by section 92-808, R. C. M. 1947, is guilty of a misdemeanor and, in addition to the punishment provided for misdemeanors, is subject to a civil penalty in an amount of not more than one thousand dollars (\$1,000). The civil penalty may be imposed and collected by the board in an action brought in the name of the state of Montana in the county in which the employer resides or in which he employs workmen. Any penalty collected under this subsection shall be paid into the industrial accident administrative earmarked revenue account.

Any person aggrieved by an order prohibiting the use of the machine, equipment, apparatus or place of employment as provided for in this section may request a hearing before the board within twenty (20) days after entry of such order. The board shall then affirm, modify or re-



voke the order and all procedures of this act relative to entry of orders, rehearing and appeal shall apply.

In addition to all other remedies provided in this act, the board may bring an action to enjoin any violation of any duly promulgated safety order, code or rule.

**History:** En. Sec. 11, Ch. 341, L. 1969.

**41-1719. Time allowed for compliance with order.** The board shall grant such time as may be reasonably necessary for compliance with any order, and any person affected by the order may petition the board for an extension of time, which the board shall grant if it finds the extension of time necessary.

**History:** En. Sec. 12, Ch. 341, L. 1969.

**41-1720. Order of closure or for cessation of work where place of employment an immediate menace to life or safety.** The board or authorized representative thereof, with the approval of the board, or the safety director, may order any place of employment closed, or the work therein to cease if it is found that the place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the workmen employed therein. Any such order of closure or for cessation of work shall be expressly limited to only that portion of the plant, installation or facility as is directly and immediately affected by the unsafe condition constituting an immediate menace to the life and safety of the workmen employed therein. Upon issuance of any such order, the board or safety director shall fix a place and time, not later than twenty-four (24) hours thereafter, for a hearing to be held before the board. Not more than twenty-four (24) hours after the commencement of the hearing, and without adjournment thereof, the board shall affirm, modify, or set aside the order. Nothing in this section shall empower the safety director to determine that any employment or place of employment is in an unsafe condition on the basis of the number or qualifications of employees operating such employment or place of employment unless a specific rule adopted after public hearing is violated. Provided that for those employments or places of employment for which no code has been adopted and where it is found by the safety director that such place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the workmen there employed, the safety director may order that portion of the plant, installation or facility as is directly and immediately affected by such unsafe condition closed for a period not to exceed four (4) hours unless such period be extended by order of the board.

**History:** En. Sec. 13, Ch. 341, L. 1969.

**41-1721. Judicial review of board's orders, rules or decisions.** (1) The orders of the board, its rules, findings and decisions, made and entered under the provisions of this act, may be reviewed by the courts within the time and in the manner specified in this section and not otherwise.

(2) Within thirty (30) days after an application for rehearing is denied, or, if the application is granted, within thirty (30) days after rendition of the decision on the rehearing, any party affected thereby may appeal to the district court for the county in which is situated the place of employment complained of for the purpose of having the lawfulness of the original order, or decision, or the order or decision on rehearing inquired into and determined.

(3) To give the district court jurisdiction it is sufficient that a notice be filed with the clerk of the court to the effect that an appeal is taken to the district court from the order or decision of the board and describing the order or decision sufficiently for purposes of identification. The notice shall be signed by the party appealing or his attorney and a copy thereof shall be served by certified mail upon the board. Within ten (10) days after the receipt of the notice, the board shall file with the clerk of court the record of proceedings before the board, including a transcript of all the evidence adduced upon the hearing and any rehearing before the board. The district court, on application for good cause shown, may extend the time within which the board shall file the record, transcript and evidence. The cause shall be tried in the same manner as a civil action, provided that no new or additional evidence may be introduced in the court, but the cause shall be heard on the record to the court as certified to it by the board.

(4) The appeal shall not be extended further than to determine whether or not:

(a) The board acted without or in excess of its powers, or in violation of the law;

(b) The order or decision was procured by fraud;

(c) The order, decision or rule is unreasonable;

(d) If findings of fact are made, the finding of fact supports the order or decision under review.

(5) An appeal may be taken from the decree of the district court to the supreme court as in all other civil cases.

**History:** En. Sec. 14, Ch. 341, L. 1969.

**41-1722. Application for rehearing of order, decision, or rule of board.** Any party aggrieved directly or indirectly by any final order, decision or rule of the board made or entered pursuant to this act may apply to the board within twenty (20) days after the order of the board for rehearing in respect to any matters determined or covered by such final order, decision or rule, and specified in the application, for hearing within the time and in the manner prescribed in this act.

**History:** En. Sec. 15, Ch. 341, L. 1969.

**41-1723. Application for rehearing—contents—waiver—copies to adverse parties—procedure where no adverse parties.** (1) The application for rehearing shall set forth specifically and in full detail the grounds upon which the applicant considers the final order, decision or rule is unjust or unlawful, and every issue to be considered by the board.

(2) The applicant for rehearing shall be deemed to have finally waived all objections, irregularities and illegalities concerning the matters upon which rehearing is sought other than those set forth in the application.

(3) A copy of the application for rehearing shall be served immediately on all adverse parties, who may file an answer thereto within ten (10) days after being served.

(4) If there are no adverse parties, the application may be heard ex parte, or the board may require the application for rehearing to be served on such parties as may be designated by the board.

**History:** En. Sec. 16, Ch. 341, L. 1969.

**41-1724. Resolution of issues on rehearing—notice—disposition.** (1) Upon the filing of the application for rehearing, if the issues raised thereby have theretofore been adequately considered by the board, it may determine the same by confirming, without hearing, its previous determination, or if a rehearing is necessary to determine one or more of the issues raised, the board shall order a rehearing thereon and consider and determine the matters raised by such application.

(2) Notice of the time and place of the rehearing shall be given to the applicant, the adverse parties and such other persons as the board may order.

(3) If after the rehearing and the consideration of all the facts, including those arising since the making of the order or decision involved, the board shall be of the opinion that all or any part of the original order or decision is in any respect unjust or unwarranted, or should be changed, the board shall abrogate, change or modify the same.

(4) An order or decision made after the rehearing, abrogating, changing or modifying the original order or decision shall have the same force and effect as an original order or decision but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the board.

(5) An application for rehearing is considered denied by the board unless it has been acted upon within thirty (30) days from the date of filing; provided that the board may, upon good cause being shown therefor, extend the time within which it may act upon an application for rehearing for not exceeding an additional thirty (30) days.

**History:** En. Sec. 17, Ch. 341, L. 1969.

**41-1725. Periodic inspections of hazardous places of employment—report.** (1) The board shall inspect from time to time all the places of employment defined in the Montana Workmen's Compensation Act as being hazardous and the machinery and appliances therein contained for the purpose of determining whether they conform to law.

(2) A report of such periodic inspection shall be filed in the office of the board and a copy thereof given the employer. Such report shall not be open to public inspection, or made public except on order of the



board, or by the board or a member of the board in the course of a hearing or proceeding.

**History:** En. Sec. 18, Ch. 341, L. 1969.

**41-1726. Workmen to notify employers of safety violations—complaint to board—investigation.** (1) A workman shall notify his employer of any violation of law or regulation pertaining to safety of places of employment when the violation comes to the knowledge of the workman.

(2) If the employer fails to remedy the violation, the workman may complain in writing to the board of the violation.

(3) Upon receiving the complaint the board shall forthwith inquire or make an inspection as to the safety of the place of employment. A copy of the report of inspection shall be given to the complainant.

**History:** En. Sec. 19, Ch. 341, L. 1969.

**41-1727. Code-making power.** (1) In addition to such other powers and duties as may be conferred upon it by law, the board shall have the power to promulgate, amend, repeal and enforce rules for the prevention of accidents to be known as "safety codes" in every employment and place of employment, including the repair and maintenance of such places of employment, to render them safe. In the performance of its duties the board may appoint advisory committees to deal with specified industries composed of equal numbers of employers and employees; and others to suggest safety codes or amendments thereto. All such safety codes and rules shall, when adopted, be not inconsistent with the then existing widely accepted codes of such engineering bodies as the American Society of Mechanical Engineers, the American Standards Association, the American Society of Safety Engineers, the United States of America Standards Institute, the National Fire Protection Association, and, in addition, agencies of the federal government with responsibilities for administering worker safety programs, and other accepted codes. Any amendments made to such codes by the board shall be such that when amended such code shall be consistent with the widely accepted safety codes as then existing. All codes and all amendments thereto and repeals thereof shall take effect thirty (30) days after certified copies thereof shall be filed in the office of the secretary of state.

(2) Every code adopted and every amendment or repeal thereof shall be published in such manner as the board may determine. A printed list of all titles of all codes including amendments thereof issued and adopted by the board under the provisions of this act, together with the dates of adoption thereof, shall be published from time to time.

**History:** En. Sec. 20, Ch. 341, L. 1969.

**41-1728. Variations.** Any employer may consult with the board for advice and assistance in complying with the provisions of this act or any codes adopted hereunder. In case of practical difficulties, the board may grant variations from particular provisions of the code and permit the

use of other or different devices or methods; provided, however, that such variations shall be granted only when it is clear that the reasonable safety of the workers in said plant or place of employment is not thereby endangered. In any case where the board shall decline or refuse to grant any request for variations on the ground that the safety of the workers involved would be endangered, the employer may request a rehearing as specified in this act. A properly indexed record of all variations made shall be kept in the office of the board and be open to public inspection.

**History:** En. Sec. 21, Ch. 341, L. 1969.

**41-1729. General research and review powers of board—power to appoint advisers.** The board may: (1) Develop greater knowledge and interest in the causes and prevention of industrial accidents, occupational diseases and related subjects through:

(a) Research, conferences, lectures and uses of public communications media,

(b) Collection and dissemination of accident statistics, and

(c) Development of staff competent in the review of safety codes.

(2) Appoint advisers who shall be compensated by the board if necessary, and who shall assist the board in establishing standards of safety. The board may adopt and incorporate in its orders such safety recommendations as it may receive from such advisers.

**History:** En. Sec. 22, Ch. 341, L. 1969.

**41-1730. Violation of safety provision—misdemeanor.** In addition to all other penalties herein provided: Every employer, workman or other person, who, either individually or acting as an officer, agent, or employee of a corporation or other person, violates any safety provision of this act, or who, directly or indirectly, knowingly induces another to do so is guilty of a misdemeanor.

**History:** En. Sec. 23, Ch. 341, L. 1969.

**41-1731. Public contractors subject to act.** Every contractor performing services for the state of Montana or any political subdivision thereof, shall be required to comply with the safety rules, codes and provisions of this act, as a part of his contract.

**History:** En. Sec. 24, Ch. 341, L. 1969.

**41-1732. Effect on existing structures and equipment.** Nothing contained in this act shall prevent the use of existing buildings, structures, and equipment during their lifetime when they are maintained in good condition, are properly safeguarded, and conform to the applicable safety standards required by Montana safety codes effective prior to the effective date of this act, and provided that replacements and alterations shall conform to all provisions of this act.

**History:** En. Sec. 25, Ch. 341, L. 1969.

**Compiler's Notes**

Chapter 341, Laws 1969 took effect July 1, 1969.

41-1733. **Occupational health hazards.** The board shall report occupational health hazards discovered in its investigations and inspection of places of employment to the state board of health and shall co-operate with the state board of health in carrying out its duties as specified in Title 69, chapter 42, R. C. M. 1947.

**History:** En. Sec. 26, Ch. 341, L. 1969.

**Separability Clause**

Section 27 of Ch. 341, Laws 1969 read  
"If any of the provisions of this act are declared or held to be invalid or unconsti-

tutional, such holding shall not affect the validity of the act as a whole, or any part thereof which can be given effect without the part so held to be unconstitutional or invalid."

## CHAPTER 19—WINTER WORK PROGRAMS

Section 41-1901. Definition of terms.

41-1902. Municipal winter work committees authorized—composition and appointment of members.

41-1903. Terms of work committee members—no compensation.

41-1904. Meetings and officers of work committee.

41-1905. Promotion of winter work program.

41-1906. State employment service to co-operate.

41-1907. Minutes of work committee filed—availability to legislators.

41-1901. **Definition of terms.** As used in this act (1) "Winter work program" means a program to promote and encourage the accomplishment of work that would alleviate the rolls of the unemployed during the winter months.

(2) "Winter work committee" is a local committee appointed to effect the program.

**History:** En. Sec. 1, Ch. 68, L. 1965.

**Title of Act**

An act concerning a winter work program.

41-1902. **Municipal winter work committees authorized—composition and appointment of members.** The mayor of any municipality may appoint a winter work committee composed of at least five (5) members. The members shall be from various economic groups including labor, industry, business, welfare and news media. In municipalities where the economic groups are represented by organizations, the mayor shall give notice to each organization that he is going to make the appointments and shall set a date by which names must be submitted. On the date set for submittal, he shall select one member from each of the economic groups.

**History:** En. Sec. 2, Ch. 68, L. 1965.

41-1903. **Terms of work committee members—no compensation.** Original appointments shall be for five (5), four (4), three (3), two (2) and one (1) years. The original terms shall be determined by lot. After the original appointments have expired, terms shall be for five (5) years. There shall be no compensation for service on this committee.

**History:** En. Sec. 3, Ch. 68, L. 1965.

41-1904. **Meetings and officers of work committee.** The committee shall meet within ten (10) days of appointment by the mayor. They shall select a chairman and a secretary and other necessary officers. Thereafter,



the committee shall meet at least quarterly and at such other times as may be necessary, convenient or desired.

History: En. Sec. 4, Ch. 68, L. 1965.

41-1905. Promotion of winter work program. The committee shall work through public service advertising and through public relations to promote the winter work program.

History: En. Sec. 5, Ch. 68, L. 1965.

41-1906. State employment service to co-operate. The employees of free public employment offices of the Montana state employment service shall co-operate with the committee.

History: En. Sec. 6, Ch. 68, L. 1965.

41-1907. Minutes of work committee filed—availability to legislators. Minutes of the meetings of the committee shall be filed by the secretary of the committee with the mayor of the municipality who shall keep them as other public records. Members of the legislative assembly may use these minutes to determine the employment problems of the municipalities involved.

History: En. Sec. 7, Ch. 68, L. 1965.

## CHAPTER 20—RESTAURANT, BAR AND TAVERN WAGE PROTECTION ACT

- Section 41-2001. Short title.  
 41-2002. Bond required of lessee.  
 41-2003. Purpose of act.  
 41-2004. Definition of terms.  
 41-2005. Bond to be filed by lessee—amount—ownership affidavit.  
 41-2006. Time of filing of bond—terms of bond—maintenance of bond required.  
 41-2008. Lessee's business enjoined until bond filed.  
 41-2010. New or additional bond—sureties.

41-2001. Short title. This act shall be known as the Restaurant, Bar and Tavern Wage Protection Act.

History: En. Sec. 1, Ch. 155, L. 1965.

### Title of Act

An act requiring the lessee of restaurants, bars or taverns to file payroll

bonds for the protection of employees of lessees where the equipment, appliances, and other accessories necessary for the conduct of business therein at the place of business are owned by the lessor.

41-2002. Bond required of lessee. From and after the effective date of this act, it shall be unlawful for any person to lease a premise to be used as the place for conducting a restaurant, bar or tavern business, without first having filed with the commissioner of labor and industry a bond in accordance with the requirements of section 41-2005.

History: En. Sec. 1, Ch. 155, L. 1965; amd. Sec. 1, Ch. 198, L. 1974.

### Amendments

The 1974 amendment deleted "where

the equipment, appliances and other accessories necessary for the conduct of business therein are owned by the lessor" after "tavern business"; and made a minor change in style.

**41-2003. Purpose of act.** The purpose of this act is to protect employees of lessees conducting business as restaurants, bars and taverns and to assure the payment of wages to such employees in the event the lessee ceases operation of his business and is unable to pay the wages due and owing to his employees.

**History:** En. Sec. 3, Ch. 155, L. 1965; amd. Sec. 2, Ch. 198, L. 1974.

under the circumstances of ownership of the equipment, appliances and other accessories as outlined in section 2 [41-2002] of this act" after "bars and taverns."

**Amendments**

The 1974 amendment deleted "employed

**41-2004. Definition of terms.** For the purposes of this act the words and phrases used herein have the following meaning:

(1) "Person" includes any establishment, firm, partnership, corporation, person or association of persons.

(2) "Restaurant" means a public eating house where food is prepared and served for human consumption on the premises.

(3) "Lessee" means one to whom a lease is made.

(4) "Bar" or "tavern" means a house where liquor or beer are sold to be drunk on the premises.

(5) "Liquor" means and includes any alcoholic, spirituous, vinous, fermented, malt or other liquor, which contains more than one per centum (1%) of alcohol by weight, but shall not mean or include beer as that term is defined in the Montana Beer Act by subsection (b) of section 4-302, Revised Codes of Montana, 1947.

(6) "Beer" means any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt and hops, or of any similar products in drinkable water, containing not more than four per centum (4%) alcohol by weight.

(7) "Employee" means a person who works for wages or salary in the service of an employer.

(8) "Business" means a commercial enterprise of any kind involving the buying and selling of goods.

**History:** En. Sec. 4, Ch. 155, L. 1965; amd. Sec. 3, Ch. 198, L. 1974.

in a business"; deleted former subdivision (11) reading "'Appliances' means all devices and apparatus used in the conduct of business"; deleted former subdivision (12) reading "'Accessories' means those articles, furnishings, supplies, devices and other apparatus which are used in and contribute in a secondary way, along with the appliances and equipment, to the conduct of a business"; and redesignated the remaining subdivisions.

**Amendments**

The 1974 amendment deleted former subdivision (3) reading "'Lessor' means one who has leased premises, equipment, appliances or accessories for a definite or indefinite period, by a written or parol lease"; deleted former subdivision (10) reading "'Equipment' means the articles, furnishings, supplies and apparatus used

**41-2005. Bond to be filed by lessee — amount — ownership affidavit.** Every person who leases from another person premises for the purpose of conducting therein a business as a restaurant, bar or tavern is hereby required to file a bond equal to at least double the amount of the projected semimonthly payroll with the commissioner of labor and industry.

**History:** En. Sec. 5, Ch. 155, L. 1965; amd. Sec. 4, Ch. 198, L. 1974.

**Amendments**

The 1974 amendment deleted "or who

leases equipment, appliances or accessories for such purpose" after "bar or tavern"; inserted "projected" before "semimonthly"; and deleted "and an affidavit showing

the name of the owner of the equipment, appliances and other accessories necessary for the conduct of business therein" from the end of the section.

**41-2006. Time of filing of bond—terms of bond—maintenance of bond required.** The bond and affidavit required by section 41-2005 shall be filed with the commissioner of labor and industry. The state of Montana shall be named as the obligee therein with good and sufficient sureties to be approved by the attorney general of the state of Montana. Said bond shall at all times be kept in full force and effect and any cancellation or revocation thereof or withdrawal of the sureties therefrom shall automatically revoke and suspend the certificate issued to the lessee [of this act] until such time as a new bond of like tenure and effect shall have been filed and approved as herein provided. Such bond shall be conditioned to assure that in any lease transaction of the type referred to in section 41-2002 the persons who perform labor or other personal services for the lessee are guaranteed their wages in the event the lessee ceases operation of the business, for any reason, and is unable to pay the wages due and owing the employees.

**History:** En. Sec. 6, Ch. 155, L. 1965; amd. Sec. 5, Ch. 198, L. 1974.

#### Compiler's Notes

The brackets around "of this act" in the third sentence were inserted by the compiler to indicate an apparent surplusage.

#### Amendments

The 1974 amendment deleted "by July 1

and February 1 of each year" at the end of the first sentence; deleted "therein as provided in section 9 [41-2009]" in the third sentence after "to the lessee"; and made minor changes in style and phraseology.

#### Repealing Clause

Section 6 of Ch. 198, Laws 1974 read "Sections 41-2007, 41-2009, and 41-2011, R. C. M. 1947, are repealed."

### 41-2007. Repealed.

#### Repeal

Section 41-2007 (Sec. 7, Ch. 155, L. 1965), relating to liability of lessor and

lessee for unpaid wages, was repealed by Sec. 6, Ch. 198, Laws of 1974.

**41-2008. Lessee's business enjoined until bond filed.** If any person engages in the restaurant, bar or tavern business, as lessee, without having first filed a bond as required by section 5 [41-2005] of this act, the attorney general of the state of Montana, the commissioner of labor and industry of the state of Montana, or any citizen, group of citizens or any association in the county where the violator conducts his business may institute an action to enjoin such person from engaging in the business until compliance with this act has been met.

**History:** En. Sec. 8, Ch. 155, L. 1965.

### 41-2009. Repealed.

#### Repeal

Section 40-2009 (Sec. 9, Ch. 155, L. 1965), relating to certificates for lessees

who file bonds, was repealed by Sec. 6, Ch. 198, Laws of 1974.

**41-2010. New or additional bond—sureties.** The commissioner of labor and industry may require a new bond or a bond of a greater amount



than double the semimonthly payroll whenever the commissioner deems it necessary for the protection of the employees of a lessee. The commissioner may, after due notice given, discharge the existing sureties from further liability and require that other sureties be provided.

**History:** En. Sec. 10, Ch. 155, L. 1965.

#### Separability Clause

Section 12 of Ch. 155, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all

valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

### 41-2111. Repealed.

#### Repeal

Section 41-2111 (Sec. 11, Ch. 155, L. 1965), relating to the disposition of appli-

cation fees, was repealed by Sec. 6, Ch. 198, Laws of 1974.

## CHAPTER 21—LABOR SAFETY STUDY COMMISSION

Section 41-2101. Intent and purpose of act.

41-2102. Appointment of commission—scope of work.

41-2103. Composition of commission.

41-2104. Distribution of proposed changes to industry and legislature.

41-2105. Legislative adoption required.

41-2106. Employment of secretary and research services by commission.

41-2107. Reimbursement of commission members.

41-2108. Adoption of rules—records.

**41-2101. Intent and purpose of act.** The intent and purpose of this act is to establish a commission to suggest changes in the laws of Montana for the purpose of governing the safety provisions in places of employment and to regulate the conduct of the employer-employee relationship in matters pertaining to safety in order to insure, as much as possible, safe places of employment and to protect and preserve the physical health and well-being of employees and to endeavor to cut down employee accidents and to revise and modernize the safety laws in order to promote safety in employment and speedy, effective and economical ways of administering such laws.

**History:** En. Sec. 1, Ch. 323, L. 1967.

#### Title of Act

An act authorizing and empowering the commission of labor of the state of Montana to recommend changes in the laws of Montana relating to safety codes, safety positions, and general safety laws; creating a commission to prepare suggested changes in safety laws and propose new laws and propose new recommendations as to the position of safety; prescribing the membership and the powers and duties of said commission; providing for the employment of a secretary-stenographer of

the commission and employment of research facilities, if deemed necessary; providing for the payment of actual travel and other expenses incurred by members of said commission in the discharge of their duties; providing that such recommended changes or new provisions in the laws of Montana governing safety codes shall be submitted to the Forty-First Legislative Assembly of the state of Montana for its consideration.

#### Cross-References

Commission abolished, sec. 82A-1010 (1).

**41-2102. Appointment of commission—scope of work.** That within thirty (30) days following the adjournment of this legislative assembly, the governor of the state of Montana shall appoint a commission of eight (8) persons, which commission shall meet and organize itself within thirty (30) days following appointment; and which commission shall

make a complete study, consider and prepare suggested changes in the safety codes of Montana.

**History:** En. Sec. 2, Ch. 323, L. 1967.

**41-2103. Composition of commission.** The commission shall be composed of the commissioner of labor as its chairman, two representatives to be selected from industry, two representatives to be selected from labor, the chairman of the industrial accident board, or his designated representative, a member of the medical profession, and a member of the bar association of Montana.

**History:** En. Sec. 3, Ch. 323, L. 1967.

**41-2104. Distribution of proposed changes to industry and legislature.** The commission so appointed shall prepare its suggested changes as well as to distribute copies to industry and labor for their consideration and suggestions as they may submit to the commission. Such recommended changes or new provisions in the laws of Montana governing safety codes shall be submitted to the Forty-First Legislative Assembly of the state of Montana for its consideration.

**History:** En. Sec. 4, Ch. 323, L. 1967.

#### **Cross-References**

Montana Safety Act, sec. 41-1708 et seq.

**41-2105. Legislative adoption required.** Any suggested changes promulgated under this act shall be effective only upon adoption by the legislature.

**History:** En. Sec. 5, Ch. 323, L. 1967.

**41-2106. Employment of secretary and research services by commission.** The said commission may from time to time employ a secretary-stenographer, as it deems necessary, to assist in its work, and shall fix the compensation of such secretary-stenographer. It shall further have the power to employ the services of any research agency which it deems necessary in the discharge of its duties.

**History:** En. Sec. 6, Ch. 323, L. 1967.

**41-2107. Reimbursement of commission members.** Members of said commission shall serve without compensation but shall be reimbursed for actual travel and other expenses incurred in the discharge of their duties, including attendance at meetings.

**History:** En. Sec. 7, Ch. 323, L. 1967.

**41-2108. Adoption of rules—records.** The commission is empowered to adopt rules for its own procedure, and to make all arrangements for its meetings, and to carry out the purpose for which it is created. The commission is directed to keep accurate records of its activities and proceedings.

**History:** En. Sec. 8, Ch. 323, L. 1967.

#### **Separability Clause**

Section 9 of Ch. 323, Laws 1967 read "If any sentence, section, clause, or phrase of this act is for any reason held to be unconstitutional or invalid, such de-

cision shall not affect the validity of the remaining portions of this act. The legislative assembly of the state of Montana hereby declares that any one or more sections, sentences, clauses or phrases may be declared unconstitutional or invalid."

**Repealing Clause**

Section 10 of Ch. 323, Laws 1967 repealed all acts and parts of acts in conflict therewith.

**Effective Date**

Section 11 of Ch. 323, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 3, 1967.

## CHAPTER 22—NURSES—EMPLOYMENT PRACTICES

- Section 41-2201. Purpose of act.  
 41-2202. Definitions.  
 41-2203. Improper employment practices.  
 41-2204. Bargaining units—determination by mutual consent or application to board.  
 41-2205. Proof of status as bargaining unit.  
 41-2206. Determination of question on status of bargaining unit—petition—election—redetermination.  
 41-2207. Duties of board relating to bargaining unit determinations.  
 41-2208. Proceedings to restrain improper employment practices—other relief—appeal.  
 41-2209. Unlawful strikes.

**41-2201. Purpose of act.** The purpose of this act is to encourage effective measures to assure uninterrupted continuation of sufficient competent nursing care of the ill and infirm in the state of Montana, and further to encourage the practice of mutually and peacefully agreeing upon the establishment and maintenance of desirable employment practices between nurse employees, professional and practical, and their health care facility employers, either public or private.

**History:** En. Sec. 1, Ch. 320, L. 1969.

professional and licensed practical nurses employed in health care facilities; establishing procedures for developing employment standards; providing rule-making authority to the state board of health.

**Title of Act**

An act providing for the adoption of orderly procedures for establishing desirable employment practices for registered

**41-2202. Definitions.** As used in this act, unless the context clearly requires otherwise:

(1) "Appropriate unit" means a homogenous group of employees (as herein defined) of a health care facility having similar duties and qualifications, determined pursuant to section 4 [41-2204] of this act.

(2) "Employee" means a registered professional or licensed practical nurse performing services for compensation for a health care facility, but does not include a member of a religious order assigned to a health care facility by the order as a part of her obligation to the order.

(3) "Health care facility" means a hospital or nursing home, or other agency or establishment, employing employees as defined in this act, whether operated publicly or privately, having as one of its principal purposes the preservation of health or the care of sick or infirm individuals or both.

(4) "Board" or "board of health" means the state board of health.

(5) "Strike" shall mean any work stoppage caused by the employees of a health care facility as defined in section 2 [subdivision (3) of this section] of this act, that interferes with the operation of the health care facility or affects the care of patients in the health care facility.

**History:** En. Sec. 2, Ch. 320, L. 1969.



**41-2203. Improper employment practices.** It is an improper employment practice for a health care facility to do one or more of the following:

(1) Interfere with or restrain or coerce employees in any manner in the exercise of their right of self-organization;

(2) Initiate, create, dominate, contribute to or interfere with the formation or administration of any employee organization that has collective bargaining as one of its principal functions;

(3) Discriminate in regard to hire terms or conditions of employment when a purpose of such is to discourage membership in an employee organization that has collective bargaining as one of its principal functions;

(4) Refuse to meet and bargain in good faith with the duly designated representatives of an appropriate bargaining unit of its employees. For the purpose of this subsection, it is a requirement of bargaining in good faith that the parties be willing to reduce in writing, and have their representative sign, any agreement arrived at through negotiations and discussion;

(5) Unilaterally exclude from work or prevent from working, or discharge any one or more employees, when the purpose of such action is in whole or in part, to interfere with or coerce or intimidate an employee in the exercise of rights assured in this law.

**History:** En. Sec. 3, Ch. 320, L. 1969.

**41-2204. Bargaining units—determination by mutual consent or application to board.** (1) The composition of an appropriate unit in a health care facility, for purposes of this law, may be determined by mutual consent between such facility and the employees thereof.

(2) In the event no such mutual consent is available, then either the facility, or representatives of employees may apply to the state board of health and said board, through a duly designated agent, shall make a determination of the composition of such an appropriate unit.

(3) In determining such appropriate unit professional employees may not be included in the same unit with nonprofessional employees unless a majority of professional employees in a proposed unit desire such inclusion. Weight shall be accorded similarity of duties, licensure, and conditions of employment, among other relevant factors, in determining an appropriate unit.

**History:** En. Sec. 4, Ch. 320, L. 1969.

**41-2205. Proof of status as bargaining unit.** An employee organization is considered to be the duly designated representative of all the employees in an appropriate unit for the purpose of section 3 [41-2203] of this act if it can show evidence that bargaining rights have been assigned to it by a majority of the employees in that unit.

**History:** En. Sec. 5, Ch. 320, L. 1969.

#### **Assignment of Bargaining Rights**

Where nine of seventeen nurses had as-

signed their bargaining rights to new nurses' association prior to "cutoff date," assignments were effective; board's request that assignments of bargaining

rights be executed anew after employer asked for a redetermination was unnecessary and fact that employee reaffirmed assignment of her bargaining rights after the cutoff date and also after termination of her employment had no effect on validity of assignment where she had

previously assigned her bargaining rights to new association, such assignment had not been revoked and she was an employee on the cutoff date. *St. John's Lutheran Hospital, Inc. v. State Board of Health*, — M —, 506 P 2d 1378.

**41-2206. Determination of question on status of bargaining unit—petition—election—redetermination.** (1) If the right of an employee organization to represent the employees in an appropriate unit is questioned by the authority in charge of the facility employing the employees, the employee organization may petition the board of health for a determination. The board of health, or his representative, shall investigate and determine the composition of an appropriate unit, if such determination has not previously been made under section 4 [41-2204] of this act, and shall determine the representative, if any, designated to represent the employees in the appropriate unit.

(2) An employee organization found by the state board of health to be authorized by at least thirty per cent (30%) of the employees in an appropriate unit may apply for an election by secret ballot to determine its right to represent the employees in that unit. If more than one employee organization claims to represent employees in that unit, the state board of health may conduct an election by secret ballot to determine which is authorized to represent the unit. If any employee organization receives a majority of the valid votes cast at the election, it is considered to be authorized to represent all the employees in that unit for the purpose of section 3 [41-2203] of this act.

(3) A determination under this section remains in effect for at least one (1) year and until either the health care facility or an employee organization shall apply for a redetermination.

**History:** En. Sec. 6, Ch. 320, L. 1969.

**41-2207. Duties of board relating to bargaining unit determinations.** The board of health may: (1) Set the time and place for hearings for determination of the composition of appropriate units when requested to make such determination under subsection 2, section 4 [41-2204], or subsection 1, section 6 [41-2206] of this act.

(2) Determine, on its own motion, by holding hearings or conducting such investigations as it thinks necessary, general classifications for health care facilities and appropriate units. When such determination has been made hereunder and when an application has been made by a health care facility or an employee organization for a specific determination as to it, the board may make such determination on the basis of such general classification. The health care facility or employee organization may, within thirty (30) days after notice to it of such determination, file a request for a hearing upon written petition which shall set forth the facts which it believes remove it from such general classification and hearing shall be held on such petition.

(3) Adopt and promulgate rules and regulations as to times and places for hearing and notice thereof so as to provide adequate notice and opportunity to be heard to all interested parties; as to elections; and so as to carry into effect the provisions of this act.

**History:** En. Sec. 7, Ch. 320, L. 1969.

**Cross-References**

Board functions transferred to department of labor and industry, sec. 82A-1003 (1).

**41-2208. Proceedings to restrain improper employment practices—other relief—appeal.** The board of health, a health care facility or an employee organization qualified to apply for an election under section 6 [41-2206] of this act may, in the name of its members, or in its name, institute proceedings to restrain the commission of any improper practice listed in section 3 [41-2203] of this act or appeal from any determination by the board. The proceeding may be instituted in the district court for any county in which the health care facility does business. The court in such an action may grant mandatory or prohibitory relief, or, on appeal, adjudicate whether the board has acted in abuse of discretion or upon arbitrary or discriminatory rules or regulations, in which event the court may reverse or modify such determination.

**History:** En. Sec. 8, Ch. 320, L. 1969.

**41-2209. Unlawful strikes.** It shall be unlawful for any employee of a health care facility as defined in section 2 [41-2202] of this act to participate in a strike if there is another strike in effect at another health care facility within a radius of 150 miles. Employees of a health care facility as defined in section 2 [41-2202] of this act or their duly elected representative must give the health care facility thirty (30) days written notice of any strike by them and must specify in the notice the day the strike is to begin.

**History:** En. Sec. 9, Ch. 320, L. 1969.

**Separability Clause**

Section 10 of Ch. 320, Laws 1969 read  
"This act shall be severable, and should

any part or provision hereof be held to be unconstitutional such declaration will not invalidate the remaining provisions hereof."

**CHAPTER 23—MINIMUM WAGES AND HOURS**

- Section 41-2301. Declaration of policy.  
41-2302. Definitions.  
41-2303. Compensation.  
41-2304. Exclusions.  
41-2305. Regulations.  
41-2306. Enforcement.  
41-2307. Provisions cumulative.

**41-2301. Declaration of policy.** It is declared to be the policy of this act (1) to establish minimum wage and overtime compensation standards for workers at levels consistent with their health, efficiency, and general well-being; (2) to safeguard existing minimum wage and overtime compensation standards which are adequate to maintain the



health, efficiency, and general well-being of workers against the unfair competition of wage and hour standards which do not provide such adequate standards of living; and (3) to sustain purchasing power and increase employment opportunities.

History: En. Sec. 1, Ch. 417, L. 1971.

**Constitutionality**

**Title of Act**

An act to establish minimum wages and hours for employees in the state of Montana; delegating to the commissioner of labor the duty of administering the act; and providing enforcement.

This act does not violate the due process clause because of vagueness, does not constitute an unlawful delegation of legislative or judicial power, and meets the constitutional requirement that the subject of an act be clearly expressed in its title. *City of Billings v. Smith*, 158 M 197, 490 P 2d 221.

**41-2302. Definitions.** (a) As used in this act, "commissioner" means the commissioner of labor and industry.

(b) "Wage" means compensation due to an employee by reason of his employment, payable in legal tender of the United States or check on banks convertible into cash on demand at full face value, subject to such allowance as may be permitted by regulations of the commissioner under section 5 [41-2305] of this act. The term "wage" includes the reasonable cost to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees; provided however, that in no case shall such inclusion exceed an amount equal to forty per cent (40%) of the total wage paid by such employer to such employee.

(c) "Employ" means to suffer or permit to work.

(d) "Employee" includes any individual employed by an employer.

(e) "Occupation" means any occupation, service, trade, business, industry or branch or group of industries or employment or class of employment in which employees are gainfully employed.

(f) "Farm worker" means any person employed to do any service performed on a farm or ranch.

(g) "Farm or ranch" shall mean any endeavor primarily engaged in cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, and poultry and fur-bearing animals and wildlife.

History: En. Sec. 2, Ch. 417, L. 1971.

**41-2303. Compensation.** (a) Except as may otherwise be provided pursuant to this act, every employer shall pay to each of his employees wages at a rate not less than one dollar sixty cents (\$1.60) an hour, save and except for farm workers as herein defined and students employed at an amusement or recreational establishment that operates on a seasonal basis, who shall be compensated at not less than the following rates, exclusive of gratuities:

(1) one dollar twenty cents (\$1.20) an hour for the first year from the effective date of this act.

(2) one dollar forty cents (\$1.40) an hour for the second year from the effective date of this act.

(3) one dollar sixty cents (\$1.60) an hour for the third year from the effective date of this act and thereafter.

(b) No employer shall employ any of his employees for a work week longer than forty (40) hours, unless such employee receives compensation for his employment in excess of forty (40) hours in a work week at a rate of not less than one and one-half ( $1\frac{1}{2}$ ) times the hourly wage rate at which he is employed. No overtime provision shall apply for farm workers. Employers of students at an amusement or recreational area that operates on a seasonal basis who furnish said students with board, lodging or other facilities shall not employ said students for a work week longer than forty-eight (48) hours, unless such students receive compensation for their employment in excess of forty-eight (48) hours in a work week at a rate of not less than one and one-half ( $1\frac{1}{2}$ ) times the hourly wage rate at which they are employed.

(c) In the case of a farm worker employed for a part of a calendar year which includes periods requiring working hours in excess of eight hours per day and other seasonal periods requiring working hours substantially less than eight hours per day the employer may pay the worker at a fixed rate of compensation during the term of employment. The employer may elect to: (1) keep a record of the total number of hours worked by the worker during the part of the year during which the worker was employed by him. The total wages paid by such employer to such employee for that part of the year during which said employee was employed by him shall not be less than the applicable minimum wage rate multiplied by the total number of hours so worked, or (2) in lieu of the minimum wage set forth herein, pay the farm worker a wage as herein defined on a monthly basis. This monthly compensation shall constitute a minimum wage and shall not be less than the following rates:

(a) two hundred eighty dollars (\$280) a month for the first year from the effective date of this act,

(b) three hundred twenty-five dollars (\$325) a month for the second year from the effective date of this act,

(c) three hundred seventy-five dollars (\$375) a month for the third year from the effective date of this act.

History: En. Sec. 3, Ch. 417, L. 1971; amd. Sec. 1, Ch. 363, L. 1973.

#### Amendments

The 1973 amendment inserted "exclusive of gratuities" at the end of the preliminary paragraph of subsection (a).

#### Public Officers and Employees

Provisions of this act and the provision

dictating that county commissioners fix the salaries of deputies (25-604) are in conflict and the special act prevails over the general provisions of this act. Because a maximum is provided by section 25-604, the time-and-a-half for overtime hours in excess of 40 hours per week is unenforceable. City of Billings v. Smith, 158 M 197, 490 P 2d 221.

**41-2304. Exclusions.** The provisions of section 41-2303 of this act shall not apply with respect to:

(a) Students participating in a distributive education program established under the auspices of an accredited educational agency.

(b) Persons employed in private homes whose duties consist of menial chores such as baby sitting, mowing lawns, cleaning sidewalks.

(c) Persons employed directly by the head of a household to care for children dependent upon the head of the household.

(d) Immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a "dependent."

(e) Any persons not regular employees thereof who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis.

(f) Handicapped workers (1) engaged in work which is incidental to training or evaluation programs or (2) whose earning capacity is so severely impaired that they are unable to engage in competitive employment.

(g) Apprentices or learners who may be exempted by the commissioner for a period not to exceed thirty (30) days of their employment.

(h) Learners under the age of eighteen (18) who are employed as farm workers, provided that such exclusion shall not exceed a period of one hundred eighty (180) days from their initial date of employment and, further provided that during this exclusion period wages paid such learners may not be less than fifty per cent (50%) of the minimum wage rate established in this act.

(i) Retired or semi-retired persons performing part-time incidental work as a condition of their residence on a farm or ranch.

(j) Any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined and delimited by regulations of the commissioner.

(k) Any individual employed by the United States of America.

History: En. Sec. 4, Ch. 417, L. 1971;  
amd. Sec. 19, Ch. 94, L. 1973.

#### Law Enforcement Officers

Subdivision (j) was not intended by the legislature to include policemen, firemen, and deputy sheriffs within the terms of "bona fide executives, administrative, or professional capacity." *City of Billings v. Smith*, 158 M 197, 490 P 2d 221.

#### Amendments

The 1973 amendment reduced the age specified near the beginning of subdivision (h) from 19 to 18 years.

**41-2305. Regulations.** The commissioner shall make and revise administrative regulations to carry out the purposes of this act. Such regulations shall take effect upon publication by the commissioner. Any person who is aggrieved by an administrative regulation may obtain a hearing before the commissioner upon filing written protest with the commissioner who shall thereupon set such matter for hearing in the county of residence of such protestant within thirty (30) days after receipt of such protest. After such hearing, the commissioner shall promulgate such further administrative regulations as the evidence produced at said hearing shall justify.

History: En. Sec. 5, Ch. 417, L. 1971.



**41-2306. Enforcement.** Enforcement of this act shall be treated as a wage claim action and shall be in accordance with sections 41-1301 through 41-1324, R. C. M. 1947, as amended. The commissioner may enforce this act without the necessity of a wage assignment.

**History:** En. Sec. 6, Ch. 417, L. 1971;      **Amendments**  
amd. Sec. 2, Ch. 363, L. 1973.

The 1973 amendment added the second sentence.

**41-2307. Provisions cumulative.** The provisions of this act shall be in addition to other provisions now provided by law for the payment and collection of wages and salaries, but shall not apply to employees covered by the Fair Labor Standards Act.

**History:** En. Sec. 7, Ch. 417, L. 1971;      **Effective Date**  
amd. Sec. 3, Ch. 363, L. 1973.

Section 4 of Ch. 363, Laws 1973 read  
"This act shall become effective on January 1, 1974."

**Amendments**

The 1973 amendment repeated this section without change.

## CHAPTER 24—EMPLOYMENT OF WOMEN

Section 41-2401. Policy.

41-2402. Functions of department of labor and industry.

41-2403. Rules of procedure and practice.

**41-2401. Policy.** This act establishes as an affirmative policy of this state within the department of labor and industry procedures which will enable women to contribute to society according to their fullest possible potential.

**History:** En. Sec. 1, Ch. 466, L. 1973.

**Title of Act**

An act providing procedures within the

department of labor and industry that will enable women to reach their fullest potential of service and contribution to society.

**41-2402. Functions of department of labor and industry.** The department of labor and industry shall:

(1) Conduct studies about the changing employment needs and problems of women in Montana and make recommendations to the governor and the legislative assembly.

(2) Direct public attention to critical employment problems confronting women as wives, mothers, homemakers and workers.

(3) Serve as a clearinghouse for information and materials pertinent to programs and services available to assist and advise women on employment and related matters.

(4) Co-operate with governmental departments and agencies primarily involved in curbing job discrimination and in the expansion of employment rights and opportunities available to the women of this state.

(5) Conduct periodic conferences throughout the state to make women more aware of employment opportunities, programs and services available to them.

(6) Serve as the central, permanent agency for the co-ordination and evaluation of employment programs and services for women of the state and as a planning agency for the development of those services.

(7) Encourage women's organizations and other groups to institute local self-help activities designed to meet women's employment and related needs.

(8) Apply for and receive grants, appropriations or gifts from any federal, state or local agency, private foundation, or individual to carry out the purposes of this act.

History: En. Sec. 2, Ch. 466, L. 1973.

**41-2403. Rules of procedure and practice.** The commissioner of the department of labor and industry may issue rules of procedure and practice consistent with the Montana Administrative Procedure Act [82-4201 to 82-4225] in order to administer and carry out the purposes of this act.

History: En. Sec. 3, Ch. 466, L. 1973.





## TITLE 42—LANDLORD AND TENANT—HIRING

Chapter 3. Tenants' security deposits, 42-301 to 42-309.

### CHAPTER 1—HIRING—IN GENERAL

#### 42-105. (7734) Must repair injuries, etc.

##### References

Kintner v. Harr, 146 M 461, 408 P 2d 487.

#### 42-109. (7738) When hiring terminates.

##### Destruction of Subject Matter

Lessee of logging skidder which burned was not liable to lessor for remaining monthly rentals after insurance proceeds

for fair market value of skidder had been paid to lessor. *American Mach. Co. v. Johnson*, 157 M 226, 483 P 2d 921.

### CHAPTER 2—HIRING OF REAL PROPERTY—OF PERSONAL PROPERTY

#### 42-201. (7741) Lessor to make dwelling house fit for its purpose.

##### Joint Tortfeasors

City-lessor which had actual notice of a defect in a sidearm heater in one of its apartments but which took no steps to determine what defects existed, to inform power company of the nature of the defects it was aware of, to warn the tenants of the dangerous condition or to follow up in determining if power company had made a service call was actively negligent

as to persons asphyxiated by blocked flue, and was not entitled to contribution on adverse judgment rendered in tort action from power company which made inadequate repairs. *Fletcher v. City of Helena*, — M —, 517 P 2d 365.

##### References

Kintner v. Harr, 146 M 461, 408 P 2d 487.

#### 42-203. (7743) Term of hiring when no limit is fixed.

##### Construction of Oral Farm Lease

Judgment for tenant in action for construction of an oral farm lease was reversed and the case was remanded for a new trial where the evidence was insufficient to show either a mutual agreement or usage and the record was completely confused as to when the lease commenced. *Enott v. Hinkle*, 140 M 206, 369 P 2d 413, 414.

##### Notice to Quit

Landlord could not maintain an action for unlawful detainer where notice to quit was not given to tenant thirty days prior to expiration of year to year tenancy. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 91.

##### Oral Lease

Under this section it is possible to have an oral lease for at least one year without an expression as to time therein. This is

consistent with section 13-606, statute of frauds, which voids an oral agreement for the leasing of realty of a period longer than one year. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 89.

Entry by a tenant under an invalid oral lease may create a tenancy from year to year, month to month, or a tenancy at will depending upon the circumstances. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 89.

##### Presumption as to Term

When tenant, pursuant to an oral agreement, entered into possession of property on April 1, 1957 to conduct a meat processing and selling business, his hiring of the property was presumed to be for one year from its commencement. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 89.

The presumption that hiring is to be for one year is a rebuttable presumption.

If the presumption is not controverted, the facts must be found according to the presumption. If it is controverted, the presumption must be given weight as evidence. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 90.

#### **Tenancy from Month to Month**

Payment of a monthly rental does not compel the conclusion that a tenancy is from month to month where other facts indicate to the contrary. *Roseneau Foods,*

*Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 90.

#### **Tenancy from Year to Year**

Where tenant hired property for meat business under an oral agreement the tenancy was initially for a year with implied renewals for one year resulting in a tenancy from year to year. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 90.

### **42-205. (7745) Renewal of lease by lessee's continued possession.**

#### **Notice to Quit**

Where notice to quit was not given by landlord to tenant thirty days prior to expiration of year to year tenancy, tenancy was deemed to be renewed for another year and unlawful detainer action could not be maintained by landlord. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 91.

#### **Tenancy from Year to Year**

Where property was hired for meat business under section 42-203 the tenancy was initially for a year with implied renewal for one year resulting in a tenancy from year to year. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 90.

### **42-206. (7746) Notice to quit.**

#### **Time for Giving Notice**

An action in unlawful detainer cannot be maintained under section 93-9703 if the tenant is lawfully in possession under a tenancy from year to year without first

giving notice thirty days prior to the anniversary date of the tenancy. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 91.

## **CHAPTER 3—TENANTS' SECURITY DEPOSITS**

- Section 42-301. Definitions.  
 42-302. Application.  
 42-303. Security deposit—deductions authorized.  
 42-304. List of damages to leased premises.  
 42-305. Failure to provide list of damages.  
 42-306. Wrongfully withholding security deposit—action for.  
 42-307. Failure of tenant to furnish new address.  
 42-308. Condition of premises at beginning of lease—verified list—failure to furnish list to tenant.  
 42-309. Waivers and contrary provisions invalid.

### **42-301. Definitions. As used in this chapter:**

(1) "Damage" means any and all tangible loss, injury or deterioration of a leasehold premises caused by the willful or accidental acts of the tenant occupying same or by the tenant's family, licensees or invitees, as well as any and all tangible loss, injury or deterioration resulting from the tenant's omissions or failure to perform any duty imposed upon the tenant by law with respect to the leasehold.

(2) "Leasehold premises" means the premises occupied by the tenant together with all common areas, recreational facilities, parking areas and storage facilities to which the tenant has access as well as all personal property owned or controlled by the landlord the use of which is permitted to the tenant.

(3) "Security deposit" means value given, in money or its equivalent, to secure the payment of rent by the tenant under a leasehold agreement,

or to secure payment for damage to the leasehold premises. If a leasehold agreement or an agreement incident thereto requires the tenant or prospective tenant to provide or maintain in effect any deposit to the landlord for part or all of the term of the leasehold agreement, the deposit shall be presumed to be a security deposit.

**History:** En. 42-301 by Sec. 1, Ch. 219,  
L. 1974.

**Title of Act**

An act establishing the rights and obligations of landlords and tenants in security deposits.

**42-302. Application.** This chapter applies to all rentals of dwellings, including mobile homes but excluding property of public housing authorities.

**History:** En. 42-302 by Sec. 2, Ch. 219,  
L. 1974.

**42-303. Security deposit—deductions authorized.** Any landlord renting property covered by this section may deduct from the security deposit a sum equal to the damage alleged to have been caused by the tenant together with a sum equal to the unpaid rent owing to the landlord at the time of such deduction and a sum for administrative and custodial expenses, which expenses shall not exceed one per cent (1%) of the security deposit. No person may deduct or withhold from the security deposit any amount for purposes other than those set forth in this subsection.

**History:** En. 42-303 by Sec. 3, Ch. 219,  
L. 1974.

**42-304. List of damages to leased premises.** Every landlord, within thirty (30) days subsequent to the termination of a tenancy or within thirty (30) days subsequent to a surrender and acceptance of the leasehold premises, whichever occurs first, shall provide the departing tenant with a verified written list of any damage to the leasehold premises which the landlord alleges is the responsibility of the tenant. Delivery of such list shall be accompanied by payment of the difference, if any, between the security deposit and the permitted charges set forth in section 3 [42-303].

**History:** En. 42-304 by Sec. 4, Ch. 219,  
L. 1974.

**42-305. Failure to provide list of damages.** Any landlord who fails to provide the departing tenant with a verified written list of damage as required by section 4 [42-304] shall forfeit all rights to withhold any portion of the security deposit.

**History:** En. 42-305 by Sec. 5, Ch. 219,  
L. 1974.

**42-306. Wrongfully withholding security deposit—action for.** Any person who wrongfully withholds a residential property security deposit, or any portion thereof, shall be liable in damages to the tenant in a civil action for an amount equal to double the sum determined to have been wrongfully withheld or deducted, the attorney's fees may be awarded the prevailing party at the discretion of the court. The burden of proof of



damages caused by the tenant to the leasehold premises shall be on the landlord. No action may be maintained by a tenant for any amount wrongfully withheld or deducted prior to:

(1) the tenant's receipt, from the landlord or his agent, of a written denial of the sum alleged to be wrongfully detained;

(2) the expiration of a thirty (30) day period after the termination of a tenancy; or

(3) the expiration of a thirty (30) day period after surrender and acceptance of the leasehold premises, whichever occurs first.

History: En. 42-306 by Sec. 6, Ch. 219,  
L. 1974.

**42-307. Failure of tenant to furnish new address.** Failure by the departing tenant to provide the landlord with his new address in writing upon termination of the tenancy or upon surrender and acceptance of the leasehold premises, whichever occurs first, shall relieve the landlord from double liability as imposed by section 6 [42-306]. Such failure shall not, however, bar the tenant from recovering the actual amount owing to him by the landlord.

History: En. 42-307 by Sec. 7, Ch. 219,  
L. 1974.

**42-308. Condition of premises at beginning of lease — verified list — failure to furnish list to tenant.** (1) Any person engaged in the rental of property for residential purposes who requires a security deposit shall furnish to each prospective tenant, prior to execution of a lease or creation of a tenancy, a separate written statement as to the present condition of the premises intended to be let, as well as a copy of the verified written list of damage, if any, provided to the tenant of the immediately preceding leasehold agreement for the premises in question.

(2) Each written statement of the present condition of a premises intended to be let shall contain, at least, the following:

(a) a clear and concise statement of the present condition of the premises known to the landlord or his agent or which should have been known upon reasonable inspection;

(b) if the premises have never previously been let, a statement indicating such fact;

(c) if any damage to the leasehold premises resulting from the immediately preceding leasehold agreement has not been restored, a statement indicating such fact and setting forth such unrestored damage; and

(d) the signature of the landlord or his agent.

(3) Any person engaged in the rental of property for residential purposes who fails to furnish a prospective tenant, prior to the execution of the lease or creation of the tenancy, with a separate written statement of the present condition of the premises intended to be let and, if any, a verified written list of damage provided to the tenant of the immediately preceding leasehold agreement, shall be barred from recovering any sum for damage to the leasehold premises unless he can establish by clear and

convincing evidence that the damage occurred during the tenancy in question and was caused by the tenant occupying the leasehold premises or the tenant's family, licensees or invitees.

History: En. 42-308 by Sec. 8, Ch. 219,  
L. 1974.

**42-309. Waivers and contrary provisions invalid.** Any provision of a leasehold agreement, either oral or written, that is contrary to this section shall be invalid. Any attempted waiver of this section by the tenant shall be invalid.

History: En. 42-309 by Sec. 9, Ch. 219,  
L. 1974.





## TITLE 43—LEGISLATURE AND ENACTMENT OF LAWS

- Chapter 1. Senatorial, representative and congressional districts, 43-106.6 to 43-106.9, 43-107 to 43-118.
2. The legislative assembly—its composition, organization, officers and employees, 43-205, 43-206.1 to 43-208, 43-210.1, 43-214.1, 43-215 to 43-218.
  3. The powers, duties and compensation of members, officers and employees of the legislative assembly, 43-310, 43-310.1, 43-319 to 43-325.
  5. Statutes—their enactment and operation—governor's approval or veto, 43-501, 43-502, 43-504, 43-505, 43-508, 43-516 to 43-518.
  7. Legislative council, 43-709 to 43-711.5, 43-712 to 43-731.
  8. Lobbying, 43-803.
  9. Legislative proceedings—dissemination, 43-901 to 43-904.
  10. Fiscal notes in legislative bills, 43-1001 to 43-1006.
  11. Legislative fiscal review committee, 43-1101 to 43-1108.

### CHAPTER 1—SENATORIAL, REPRESENTATIVE AND CONGRESSIONAL DISTRICTS

- Section 43-106.6. Number of senators—senatorial districts and apportionment.
- 43-106.7. Number of representatives—representative districts and apportionment.
- 43-106.8. Division of multi-member districts into single-member districts.
- 43-106.9. Adjustment of senatorial terms.
- 43-107. Congressional districts.
- 43-108. Decennial selection of reapportionment commission.
- 43-109. Appointment of commissioners.
- 43-110. Vacancy.
- 43-111. Compensation of reapportionment commissioners.
- 43-112. Technical and clerical services for commission.
- 43-113. Co-operation of state agencies.
- 43-114. Public hearing on reapportionment plan.
- 43-115. Time for submission of plan.
- 43-116. Legislative recommendations.
- 43-117. Filing of final plan—dissolution of commission.
- 43-118. Commissioners ineligible for legislative office.

#### 43-101 to 43-106. (42 to 47) Repealed.

##### Repeal

These sections (Secs. 110 to 112, Pol. C. 1895; Sec. 2, Ch. 38, L. 1911; Sec. 1, Ch. 6, L. 1921; Sec. 2, Ch. 192, L. 1921; Sec. 1, Ch. 144, L. 1939; Secs. 1 to 4, Ch.

37, L. 1941; Secs. 1, 2, Ch. 191, L. 1951; Secs. 1, 2, Ch. 233, L. 1961), relating to apportionment of legislative representation, were repealed by Sec. 13, Ch. 194, Laws 1967.

#### 43-106.1, 43-106.2. Repealed.

##### Repeal

Sections 43-106.1, 43-106.2 (Secs. 1, 2, Ch. 194, L. 1967), relating to legislative

apportionment, were repealed by Sec. 5, Ch. 3, Ex. Laws 1971 and by Sec. 6, Ch. 8, 2nd Ex. Laws 1971.

#### 43-106.3 to 43-106.5. Unconstitutional.

##### Unconstitutional

These sections (Secs. 1, 2, 4, Ch. 3, 1st Ex. L. 1971) were held unconstitutional by a three-judge federal court in a de-

cision rendered on June 11, 1971, in *Wold v. Anderson*, 327 F Supp 1342. See annotation following sec. 43-106.6.

43-106.6. Number of senators—senatorial districts and apportionment. The senate of the legislative assembly shall consist of fifty (50) members.

The senatorial districts and the number of senators elected from each district are as follows:

Senatorial District Number	Number of Senators	District consists of County or Counties
1	1	Big Horn, Powder River, Carter, less Ekalaka census enumerator division of Carter
2	1	Custer and Ekalaka census enumerator division of Carter
3	2	Richland, Dawson, Wibaux, Fallon
4	2	Sheridan, Roosevelt, Daniels and Valley less the Fort Peck and Hinsdale census enumerator divisions of Valley
5	1	Blaine, Phillips and the Fort Peck and Hinsdale census enumerator divisions of Valley
6	1	Garfield, Rosebud, McCone, Prairie and Treasure
7	1	Stillwater, Carbon and south of the Yellowstone census enumerator division of Sweet Grass
8	6	Yellowstone less the Buffalo Creek census enumerator division, the Shepherd enumerator division and the Huntley Project census enumerator division
9	1	Meagher, Wheatland, Golden Valley, Musselshell and north of the Yellowstone census enumerator division of Sweet Grass and Buffalo Creek census enumerator division and Huntley Project enumerator division of Yellowstone and Shepherd division of the census enumerator of Yellowstone
10	1	Fergus and Petroleum
11	3	Gallatin and Park
12	3	Broadwater, Jefferson and Lewis and Clark
13	6	Cascade
14	2	Hill, Chouteau, Judith Basin and Liberty
15	2	Glacier, Toole, Pondera, Teton
16	3	Flathead
17	1	Lake

Senatorial District Number	Number of Senators	District consists of County or Counties
18	4	Missoula less Bonner-Clinton census enumerator division of Missoula
19	2	Powell, Deer Lodge, Granite and Bonner-Clinton census enumerator division of Missoula
20	3	Silver Bow
21	1	Madison and Beaverhead
22	1	Ravalli
23	2	Mineral, Sanders and Lincoln

History: En. Sec. 1, Ch. 8, 2nd Ex. L. 1971.

#### Title of Act

An act to apportion the legislative assembly according to the 1970 federal census; and repealing sections 43-106.1 and 43-106.2, R. C. M. 1947.

#### Constitutionality

The reapportionment plan contained in secs. 43-106.6 to 43-106.9 does not violate the equal protection clause of the federal constitution. *Wold v. Anderson*, 335 F Supp 952.

### DECISIONS UNDER FORMER LAW

#### Unconstitutionality

Former sections 43-101 to 43-105 were unconstitutional in that they violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *Herweg v. Thirty-Ninth Legislative Assembly of State of Montana*, 246 F Supp 454.

Former sections 43-106.3 to 43-106.5, enacted pursuant to guidelines established

in *Herweg v. Thirty-Ninth Legislative Assembly*, which contained population deviations of 37% from the smallest to the largest senatorial district and 23% from the smallest to the largest representative district, violated the equal protection clause of the fourteenth amendment to the United States constitution. *Wold v. Anderson*, 327 F Supp 1342.

**43-106.7. Number of representatives—representative districts and apportionment.** Representatives of the legislative assembly shall consist of one hundred (100) members. The representatives elected from each district are as follows:

Representative District Number	Number of Representatives	District consists of County or Counties
1	2	Big Horn, Powder River, Carter less Ekalaka census enumerator division of Carter
2	2	Custer and Ekalaka census enumerator division of Carter
3	4	Richland, Dawson, Wibaux, and Fallon
4	4	Sheridan, Roosevelt, Daniels and Valley, less the Fort Peck and Hinsdale census enumerator divisions of Valley



Representative District Number	Number of Representatives	District consists of County or Counties
5	2	Blaine, Phillips and the Fort Peck and Hinsdale census enumerator divisions of Valley
6	2	Garfield, Rosebud, McCone, Prairie and Treasure
7	2	Stillwater, Carbon and south of the Yellowstone census enumerator division of Sweet Grass
8	12	Yellowstone less the Buffalo Creek census enumerator division, the Shepherd enumerator division and the Huntley Project census enumerator division
9	2	Meagher, Wheatland, Golden Valley, Musselshell and north of the Yellowstone census enumerator division of Sweet Grass and Buffalo Creek census enumerator division and Huntley Project enumerator division and Shepherd division of the census enumerator of Yellowstone
10	2	Fergus and Petroleum
11	6	Gallatin and Park
12	6	Broadwater, Jefferson and Lewis and Clark
13	12	Cascade
14	4	Hill, Chouteau, Judith Basin and Liberty
15	4	Glacier, Toole, Pondera, Teton
16	6	Flathead
17	2	Lake
18	8	Missoula less Bonner-Clinton census enumerator division of Missoula
19	4	Powell, Deer Lodge, Granite and Bonner-Clinton census enumerator division of Missoula
20	6	Silver Bow
21	2	Madison and Beaverhead
22	2	Ravalli
23	4	Mineral, Sanders and Lincoln

History: En. Sec. 2, Ch. 8, 2nd Ex. L.  
1971.

**43-106.8. Division of multi-member districts into single-member districts.** A multi-member district may be divided into single-member districts within a senatorial district in the following manner:

(1) Eight per cent (8%) of the registered voters of the multi-member district as determined by the last registration lists applicable to the counties in such multi-member districts must first petition and said petition shall substantially meet all of the requirements of a petition for initiative and referendum as provided in sections 37-101, 37-102 and 37-103, R. C. M. 1947, for such division. If the multi-member district is located within a single county, the petition signed by the required number of voters shall be filed with the clerk and recorder of that county. If the multi-member district embraces areas in more than one (1) county, the required petition shall be filed in the office of the clerk and recorder of any county embraced in whole or in part in the district and certified copies of such petition shall be sent by that clerk and recorder to the clerks and recorders of all other counties embraced in whole or in part in such multi-member districts.

(2) The clerks and recorders with whom such petitions, whether originals or certified copies, are filed shall as promptly as possible examine such petition as to the signatures thereon which are of residents of their respective counties and shall certify to the clerk and recorder of the county in which the original petition was filed as to the number of valid signatures on said petition as to the number of registered voters in their respective counties and included within the multi-member district. The clerk and recorder with whom the original petition was filed shall also as promptly as possible examine the petition as to the signatures thereon which are of residents of his county and shall determine the number of valid signatures as to his county. Upon receipt of the certificates of the other clerks and recorders, the clerk and recorder with whom the original petition was filed shall total the number of valid signatures on said petition and, if such petition contains valid signatures of at least eight per cent (8%) of the registered voters of the multi-member district, he shall so certify to the county commissioners of each county affected in whole or in part.

(3) The county commissioners of each county affected in whole or in part, upon receipt of the certification by the clerk and recorder, shall meet together as promptly as possible and shall establish a time of election, at which shall be presented the question whether the district shall be divided into single-member districts.

(4) If a majority of the voters voting at such election shall vote in favor of dividing the multi-member district, the county commissioners of the affected counties shall meet together as promptly as possible after the results of such election have been certified, and shall divide the multi-member district into single-member districts. Any such plan of division shall require the approval of the majority of the commissioners of each of the counties affected.

(5) Single-member districts shall be as compact as possible, comprise contiguous territory and shall be as nearly equal as practicable in popula-

tion. Boundaries of the single-member districts shall follow the census enumerator division lines.

History: En. Sec. 3, Ch. 8, 2nd Ex. L. 1971.

**43-106.9. Adjustment of senatorial terms.** The senators shall be elected for the term of four (4) years and they shall be divided into two (2) classes with terms concluding in alternate bienniums. The terms of office of those senators in districts 8, 13, 16, 17, 18, 20, 21 and 22 will continue as they presently exist, and they will run for re-election upon expiration of their present terms of office. The terms of office of all other senators will expire on the first Monday of January, 1973.

The senators elected in districts 1, 2, 5 and 6 shall be elected for a term of four (4) years. The senators elected in districts 3, 4, 11, 12, 14, 15, 19 and 23 shall, pursuant to the regulations to be promulgated by the secretary of state, draw lots for the purpose of determining which of said elected senators of said districts shall serve for four (4) years and which shall serve for two (2) years to the end that in each of the said districts, in so far as possible, one-half ( $\frac{1}{2}$ ) of the senators shall serve for four (4) years and one-half ( $\frac{1}{2}$ ) for two (2) years; provided, however, that in districts 11 and 12 the senators there elected shall draw lots to determine which one of the three in each district shall be subject to the drawing hereinafter mentioned.

The remaining senators from districts 11 and 12 shall themselves draw lots to determine which shall serve for four (4) years and which shall serve for two (2) years. The names of elected senators from districts 7, 9 and 10 including the one (1) from each of districts 11 and 12, aforesaid, shall be placed in a receptacle from which the secretary of state shall draw three (3) names. The senators whose names are thus drawn shall serve for four (4) years and the remainder not drawn shall serve for two (2) years.

History: En. Sec. 4, Ch. 8, 2nd Ex. L. 1971.

#### Separability Clause

Section 5 of Ch. 8, 2nd Ex. Laws 1971 read "If any clause, sentence, paragraph, section, or any part of this act shall be declared and adjudged to be invalid and/or unconstitutional, such invalidity or unconstitutionality shall not affect, impair, invalidate or nullify the remainder of this act."

#### Repealing Clause

Section 6 of Ch. 8, 2nd Ex. Laws 1971 read "Sections 43-106.1 and 43-106.2, R. C. M. 1947, are repealed."

#### Effective Date

Section 7 of Ch. 8, 2nd Ex. Laws 1971 provided the act should be in effect from and after its passage and approval. Approved June 29, 1971.

**43-107. (48) Congressional districts.** The counties of Beaverhead, Broadwater, Deer Lodge, Flathead, Gallatin, Granite, Jefferson, Lake, Lewis and Clark, Lincoln, Madison, Mineral, Missoula, Powell, Ravalli, Sanders, Silver Bow, Glacier, Toole, Liberty, Pondera, Meagher, and Park shall constitute the first congressional district of the state. The counties of Big Horn, Blaine, Carbon, Carter, Cascade, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Hill, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Prairie, Richland, Rosebud, Roosevelt, Sheridan, Stillwater, Sweet Grass, Teton,



Treasure, Valley, Wheatland, Wibaux and Yellowstone shall constitute the second congressional district of the state.

Whenever any county is created, comprised partly of the territory of both such districts, said county shall belong to and become a part of the district to which major portion of the territory of said county belonged and was a part prior to the creation of such new county.

**History:** Ap. p. Sec. 120, Pol. C. 1895; re-en. Sec. 47, Rev. C. 1907; amd. Sec. 1, Ch. 44, L. 1917; re-en. Sec. 48, R. C. M. 1921; amd. Sec. 1, Ch. 113, L. 1945; amd. Sec. 1, Ch. 124, L. 1967; amd. Sec. 1, Ch. 187, L. 1971.

#### Amendments

The 1967 amendment deleted prelim-

inary and generalized descriptions of the districts; and transferred Glacier, Toole, Liberty, Pondera, Teton, Meagher and Park counties from the second congressional district to the first congressional district.

The 1971 amendment transferred Teton County from the first congressional district to the second congressional district.

### DECISIONS UNDER FORMER LAW

#### Unconstitutionality

Section 43-107, prior to the 1967 amendment, was unconstitutional in that it violated the Equal Protection Clause

of the Fourteenth Amendment of the United States Constitution. *Herweg v. Thirty-Ninth Legislative Assembly of State of Montana*, 246 F Supp 454.

**43-108. Decennial selection of reapportionment commission.** During the 1973 legislative session and in each session preceding each federal population census, a commission of five (5) citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts.

**History:** En. Sec. 1, Ch. 21, L. 1973.

#### Title of Act

An act implementing article V, section

14 of the 1972 Montana constitution by providing for a districting and apportionment commission; and providing for an immediate effective date.

**43-109. Appointment of commissioners.** The majority and minority leaders of each house shall each designate one (1) commissioner. Two commissioners must be residents of the western congressional district and two commissioners must be residents of the eastern congressional district. The majority leader in each house shall have first choice of the congressional district from which he will select a commissioner. Within twenty (20) days after their designation, the four (4) commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four (4) members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

**History:** En. Sec. 2, Ch. 21, L. 1973.

**43-110. Vacancy.** In the event a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor.

**History:** En. Sec. 3, Ch. 21, L. 1973.

**43-111. Compensation of reapportionment commissioners.** Commissioners are entitled to compensation of twenty dollars (\$20) per day plus travel and actual expenses while attending commission meetings or in carrying out the official duties of the commission.

**History:** En. Sec. 4, Ch. 21, L. 1973.

**43-112. Technical and clerical services for commission.** The executive director of the legislative council, under the direction of the commission, shall provide the technical staff and clerical services which the commission needs to prepare its districting and apportionment plan.

History: En. Sec. 5, Ch. 21, L. 1973.

**43-113. Co-operation of state agencies.** Upon request state agencies shall co-operate with the commission and furnish technical assistance and consulting personnel.

History: En. Sec. 6, Ch. 21, L. 1973.

**43-114. Public hearing on reapportionment plan.** Before the commission submits its plan to the legislature, it shall hold at least one (1) public hearing on the plan at the state capitol. The commission may hold other hearings as it deems necessary.

History: En. Sec. 7, Ch. 21, L. 1973.

**43-115. Time for submission of plan.** The first commission shall submit its plan to the 1974 legislature by the tenth legislative day; each subsequent commission shall submit its plan to the legislature by the tenth legislative day of the first regular session after its appointment or after the census figures are available.

History: En. Sec. 8, Ch. 21, L. 1973.

**43-116. Legislative recommendations.** Within thirty (30) days after the commission submits its plan to the legislature, the legislature shall return the plan to the commission with its recommendations.

History: En. Sec. 9, Ch. 21, L. 1973.

**43-117. Filing of final plan—dissolution of commission.** Within thirty (30) days after receiving the plan and the legislature's recommendations, the commission shall file its final plan with the secretary of state. Upon filing, the plan shall become law and the commission shall be dissolved.

History: En. Sec. 10, Ch. 21, L. 1973.

**43-118. Commissioners ineligible for legislative office.** A member of the commission may not run for election to a legislative seat within two (2) years after the districting and apportionment plan in which he participated becomes effective.

History: En. Sec. 11, Ch. 21, L. 1973.

#### Effective Date

Section 12 of Ch. 21, Laws 1973 pro-

vided the act should be in effect from and after its passage and approval. Approved February 8, 1973.

## CHAPTER 2—THE LEGISLATIVE ASSEMBLY—ITS COMPOSITION, ORGANIZATION, OFFICERS AND EMPLOYEES

Section 43-205. Time and place of meeting.

43-206.1. Rosters prepared from election records.

43-207. Senate, organization of.

43-208. House of representatives, organization of.

43-210.1. Tie votes in organizing.

43-214.1. Officers of the senate and house of representatives.

- 43-215. Filling vacancies in legislative assembly—appointment by board of county commissioners—calling of board meeting.  
 43-216. Alternate method of selection—failure of one candidate to receive majority vote.  
 43-217. "Vacancy" defined.  
 43-218. Pre-session caucus—house appropriation and senate finance and claims committee member—per diem and expenses.

#### 43-203, 43-204. (53, 54) Repealed.

##### Repeal

These sections (Secs. 153, 154, Pol. C. 1895), relating to the election of senators,

were repealed by Sec. 13, Ch. 194, Laws 1967.

43-205. (55) Time and place of meeting. Each session of the legislative assembly shall meet at the seat of government, at twelve (12) noon, on the first Monday except when it is January 1st, then they shall meet on the first Wednesday of January of each year, and at other times when convened by the governor or by a written request of a majority of the members or, when the legislative assembly is in session, by a recorded vote of a majority of the members.

History: En. Sec. 160, Pol. C. 1895; re-en. Sec. 55, Rev. C. 1907; re-en. Sec. 55, R. C. M. 1921; amd. Sec. 1, Ch. 279, L. 1973. Cal. Pol. C. Sec. 235.

##### Amendments

The 1973 amendment inserted "except when it is January 1st, then they shall

meet on the first Wednesday"; substituted "of each year" for "1897, and each alternate year thereafter"; added the clauses providing for convening on written request or recorded vote of the members; and made minor changes in phraseology.

#### 43-206. (56) Repealed.

##### Repeal

Section 43-206 (Sec. 1, p. 89, L. 1885; Sec. 161, Pol. C. 1895), making certificate

of election prima facie evidence of right to seat, was repealed by Sec. 4, Ch. 18, Laws 1969.

43-206.1. Rosters prepared from election records. The secretary of state shall prepare certified rosters from the official election records on file in his office for use in the organization of the senate and house of representatives.

History: En. Sec. 1, Ch. 18, L. 1969.

##### Title of Act

An act to provide that the secretary of state shall prepare a certified roster to be

used in the organization of both houses of the legislature; amending sections 43-207 and 43-208, R. C. M. 1947, and repealing section 43-206, R. C. M. 1947.

43-207. (57) Senate, organization of. At the hour of twelve o'clock, noon, on the day appointed for the meeting of any regular session of the legislative assembly, the president of the senate, or in case of his absence or inability, then the senior member present, must take the chair, call the senators and senators-elect to order, call over the senators from the certified roster prepared by the secretary of state, and then, from the certified roster prepared by the secretary of state, call over the senatorial districts and counties, in their order, from which members have been elected at the preceding election, and after the same are called the members-elect must take the constitutional oath of office and assume their seats. The senate may thereupon, if a quorum is present, proceed to elect its officers.



**History:** En. H. B. No. 69, p. 103, L. 1897; re-en. Sec. 163, Pol. C. 1895; re-en. Sec. 57, Rev. C. 1907; re-en. Sec. 57, R. C. M. 1921; amd. Sec. 2, Ch. 18, L. 1969. Cal. Pol. C. Sec. 238.

#### Amendments

The 1969 amendment inserted "call over

\* \* \* secretary of state" after "to order," substituted "from the certified \* \* \* and counties" for "call over the senatorial districts" after "and then," substituted "after the same are called" for "as the same are called," before "the members-elect," and deleted "present their certificates" before "take the constitutional oath of office."

**43-208. (58) House of representatives, organization of.** At the time specified in section 43-207, the secretary of state, or in case of his absence or inability, then the senior member-elect present, must take the chair, call the members-elect of the house of representatives to order, and then, from the certified roster prepared by the secretary of state, call over the roll of counties and districts; and after the same are called the members-elect must take the constitutional oath of office and assume their seats. The house of representatives may thereupon, if a quorum is present, proceed to elect its officers.

**History:** En. Sec. 164, Pol. C. 1895; re-en. Sec. 58, Rev. C. 1907; re-en. Sec. 58, R. C. M. 1921; amd. Sec. 3, Ch. 18, L. 1969. Cal. Pol. C. Sec. 239.

#### Amendments

The 1969 amendment inserted "from the certified \* \* \* secretary of state" after "and then," substituted "after the same"

for "as the same" before "are called," and deleted "present their certificates" before "take the constitutional oath of office."

#### Repealing Clause

Section 4 of Ch. 18, Laws 1969 read "Section 43-206, R. C. M. 1947, is repealed."

**43-210.1. Tie votes in organizing.** In the event there is a tie vote for the purposes of organizing the senate or the house of representatives then, for the purposes of organization, the political party's candidate for president of the senate or speaker of the house then having a member of his party as the governor of Montana shall be deemed to be elected.

**History:** En. Sec. 1, Ch. 25, L. 1973.

#### Title of Act

An act to designate the president of

the senate or the speaker of the house of representatives should there occur a tie vote for the purposes of organizing either house.

### 43-211 to 43-214. (61 to 64) Repealed.

#### Repeal

These sections (Sec. 9, p. 90, L. 1885; Secs. 1 to 3, p. 170, L. 1891; Secs. 1, 2, Ch. 1, L. 1915; Sec. 1, Ch. 44, L. 1937; Sec. 1, Ch. 50, L. 1937; Sec. 1, Ch. 23, L. 1939;

Sec. 1, Ch. 1 and Sec. 1, Ch. 3, L. 1943), relating to officers and employees of the legislative assembly and providing for compelling attendance of legislators, were repealed by Sec. 4, Ch. 1, Laws 1965.

**43-214.1. Officers of the senate and house of representatives.** (1) The elected officers of the senate include: a secretary of the senate and a chaplain. A sergeant-at-arms shall be appointed by the committee on committees.

(2) The elected officers of the house of representatives include: a chief clerk and a chaplain. A sergeant-at-arms shall be appointed by the speaker.

(3) All of the foregoing officers shall be elected or appointed by the house in which they are employed.

**History:** En. 43-214.1 by Sec. 1, Ch. 186, L. 1974.

#### Title of Act

An act establishing certain officers of

the legislature and providing that they be elected or appointed by their respective chambers.

**43-215. Filling vacancies in legislative assembly—appointment by board of county commissioners—calling of board meeting.** When a vacancy occurs, in either house of the legislative assembly, the vacancy shall be filled by appointment by the board of county commissioners, or, in the event of a multicounty district, the boards of county commissioners comprising the district sitting as one appointing board. The chairman of the board of county commissioners of the county in which the person resided whose vacancy is to be filled shall call a meeting for the purpose of appointing the member of the legislative assembly, and he shall act as the presiding officer of the meeting.

**History:** En. Sec. 1, Ch. 179, L. 1967.

**Preamble**

**Title of Act**

An act to provide that vacancies in either house of the legislative assembly shall be filled by the board or boards of county commissioners of the county or counties concerned.

Chapter 179, Laws 1967, contained a preamble reading: "Whereas, section 45, Article V of the Montana Constitution, which provides for the filling of vacancies in the legislative assembly has been repealed by an amendment to the Montana Constitution adopted by the electorate at the November 8, 1966 general election."

**43-216. Alternate method of selection—failure of one candidate to receive majority vote.** In the event that a decision cannot be made by the appointing board because of failure of any candidate to receive a majority of the votes, the final decision may be made by lot from a number of candidates, not exceeding the number of counties comprising the district, in accordance with rules of selection adopted by the appointing board.

**History:** En. Sec. 2, Ch. 179, L. 1967.

**43-217. "Vacancy" defined.** For the purposes of this act, "vacancy" or "vacancies" has the same meaning as prescribed in section 59-602, R.C.M. 1947.

**History:** En. Sec. 3, Ch. 179, L. 1967.

**43-218. Pre-session caucus—house appropriation and senate finance and claims committee member—per diem and expenses.** As soon after the official canvass as possible, but not later than December 1 of each year following an election when members of the legislative assembly are elected, the majority and minority parties of each house of the legislative assembly shall hold a pre-session caucus for holdover senators, senators-elect, and representatives-elect. The purpose of the caucus of each party of each house is to elect officers, appoint committees and hire any necessary employees. Members of the house appropriations committee and the senate finance and claims committee named at the caucus shall begin reviewing requests for appropriations immediately and may visit state agencies and institutions to discuss requests. Members of these committees, except senators elected at the general election held in 1968, shall receive twenty dollars (\$20) per day for each day engaged in committee business, and all members of these committees shall be reimbursed for actual and necessary expenses incurred in their duties. Per diem and expenses shall be paid by the department of administration from the appropriation for operation of the preceding legislative assembly.

History: En. Sec. 2, Ch. 274, L. 1969; amd. Sec. 98, Ch. 326, L. 1974.

### Compiler's Notes

Section 23-1814, referred to as amended in the Title of Chapter 274, Laws 1969, was repealed by Sec. 248, Ch. 368, Laws 1969 and no specific amendment of the section appeared in the text of the former Act.

### Title of Act

An act to fix the mileage paid legislators traveling to and from sessions and provide that holdover senators, senators-elect, and representatives-elect of the majority and minority parties shall receive mileage for travel to and from the pre-session caucuses; to provide for a pre-session caucus; to provide that members appointed at the caucus to the house appropriations and the senate finance and

claims committee shall begin reviewing money requests immediately; to provide that members of these committees, except senators elected at the general election held in 1968, shall receive \$20 per diem for each day engaged in committee business, and all members of these committees shall be reimbursed for actual and necessary expenses incurred in their duties, all per diem and expense payments to be paid by the state controller from the appropriation for operation of the preceding legislative assembly; and to change the state canvass date to permit a caucus December 1 or earlier; amending sections 23-1814 and 43-310, R. C. M. 1947.

### Amendments

The 1974 amendment substituted "department of administration" in this section for "state controller."

## CHAPTER 3—THE POWERS, DUTIES AND COMPENSATION OF MEMBERS, OFFICERS AND EMPLOYEES OF THE LEGISLATIVE ASSEMBLY

Section 43-310. Per diem, mileage and expenses of members.

43-310.1. Salary when legislature not in session.

43-319. Special session convened by governor or majority of members.

43-320. Legislative call of future special session while legislature is in session.

43-321. Request to poll legislators on special session.

43-322. Legislators' ballot to vote on special session.

43-323. Legislative call of immediate special session.

43-324. Notice of date special session is to convene.

43-325. Effect of failure to approve special session.

43-302, 43-303. (66, 67) Repealed.

### Repeal

These sections (Secs. 201, 202, Pol. C. 1895), relating to the secretary of the

senate, the clerk of the house, and their assistants, were repealed by Sec. 4, Ch. 1, Laws 1965.

43-305 to 43-309. (69 to 73) Repealed.

### Repeal

These sections (Sec. 6, p. 171, L. 1891; Secs. 204 to 207, 209, Pol. C. 1895; Sec. 3, Ch. 1, L. 1915; Sec. 1, Ch. 210, L. 1943), relating to the sergeants-at-arms, the en-

grossing clerks and enrolling clerks, and other officers and employees of the legislative assembly, were repealed by Sec. 4, Ch. 1, Laws 1965.

43-310. (74) Per diem, mileage and expenses of members. (1) Legislators are entitled to compensation of twenty dollars (\$20) per legislative day, payable weekly, during a session of the legislature, and twelve cents (12¢) per mile for each mile of travel to and from their residences and the place of holding the session, by the shortest regularly traveled automobile route.

(2) Members are also entitled to thirty-three dollars (\$33) per day, seven (7) days a week payable weekly during a legislative session, as reimbursement for expenses incurred in attending the session. Expense payments shall stop when the legislature recesses for more than three (3) days and shall resume when the legislature reconvenes.



(3) While going to, attending, and returning from legislative standing committee meetings and necessary committee business authorized by the chairman of the legislative council during the legislative interim, legislators are entitled to

- (a) a mileage allowance of twelve cents (12¢) per mile for each mile of travel,
  - (b) actual expenses, and
  - (c) compensation of twenty dollars (\$20) per day.
- (4) Legislators are also entitled to a mileage allowance of twelve cents (12¢) per mile for travel to and from their respective pre-session caucus meeting.

**History:** En. Sec. 220, Pol. C. 1895; re-en. Sec. 77, Rev. C. 1907; amd. Sec. 1, Ch. 45, L. 1909; re-en. Sec. 74, R. C. M. 1921; amd. Sec. 1, Ch. 23, L. 1955; amd. Sec. 1, Ch. 32, L. 1963; amd. Sec. 1, Ch. 180, L. 1965; amd. Sec. 1, Ch. 274, L. 1969; amd. Sec. 1, Ch. 4, L. 1971; amd. Sec. 1, Ch. 72, L. 1973. Cal. Pol. C. Sec. 265.

#### Amendments

The 1963 amendment increased the mileage allowance from seven to eight cents per mile.

The 1965 amendment designated the former section as subsection (1) and added subsection (2).

The 1969 amendment made subsection (1) provisions applicable to holdover members of the legislature and increased mileage allowance from eight to nine cents per mile, and added subsection (3).

The 1971 amendment increased the reimbursement for expenses specified in subsection (2) from \$15.00 to \$25.00 per day.

The 1973 amendment increased the mileage rate from nine cents to twelve cents per mile in subsection (1); in-

creased the per diem rate from \$25.00 to \$33.00 per day, made the per diem rate applicable seven days per week, and added the second sentence to subsection (2); rewrote subsection (3); added subsection (4); and made minor changes in style and phraseology.

#### Effective Dates

Section 2 of Ch. 4, Laws 1971 read "This bill shall be effective for the Forty-Second Legislative Assembly and all sessions thereafter."

Section 2 of Ch. 72, Laws 1973 read "The rates of per diem, mileage and expenses provided for in this act shall be applicable from and after January 1, 1973."

Section 3 of Ch. 72, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved February 27, 1973.

#### Temporary Provision

Chapter 1, Laws of 1973, prescribed the duties and compensation of officers and employees of the Forty-Third Legislative Assembly.

**43-310.1. Salary when legislature not in session.** Salary compensation paid to members of the legislature for performance of their official duties when the legislature is not in session shall be computed in the same manner as per diem is computed under section 59-539.

**History:** En. Sec. 1, Ch. 224, L. 1973.

#### Title of Act

An act providing that compensation

for legislators when engaged in official business during an interim period is computed in quarters of days.

### 43-312 to 43-317. (76 to 78.3) Repealed.

#### Repeal

These sections (Secs. 222, 223, Pol. C. 1895; Sec. 3, Ch. 45, L. 1909; Sec. 1, Ch. 37, L. 1913; Secs. 4, 5, Ch. 1, L. 1915; Sec. 1, Ch. 115, L. 1917; Secs. 1 to 3, Ch. 112, L. 1927; Sec. 1, Ch. 6, L. 1935; Sec.

2, Ch. 50, L. 1937; Sec. 2, Ch. 1 and Sec. 2, Ch. 3, L. 1943), relating to the compensation of legislative officers and employees and to property of the legislative assembly, were repealed by Sec. 4, Ch. 1, Laws 1965.

**43-319. Special session convened by governor or majority of members.** The legislature may be convened in special session by the governor or at the written request of a majority of the members. The governor or the legislature may limit the special session to the subjects specified in the call.

**History:** En. Sec. 1, Ch. 433, L. 1973.

**Title of Act**

An act implementing article V, section 6 of the 1972 Montana constitution by

creating procedures which enable the legislature to call itself into special session; and providing for an immediate effective date.

**43-320. Legislative call of future special session while legislature is in session.** When the legislature is in session, a majority of the members may by a written request call a special session to meet at a specified time.

**History:** En. Sec. 2, Ch. 433, L. 1973.

**43-321. Request to poll legislators on special session.** When the legislature is not in session, any ten (10) members may in writing request the secretary of state to poll the legislators to determine if a majority are in favor of a special session. The request must state:

- (1) the conditions warranting the call of a special session;
- (2) the purposes of the special session; and
- (3) the proposed convening date and time of the special session.

**History:** En. Sec. 3, Ch. 433, L. 1973.

**43-322. Legislators' ballot to vote on special session.** Within five (5) days after receiving a request, the secretary of state shall send to all legislators by certified mail a ballot which contains:

- (1) the names of the legislators making the request;
- (2) the reasons for calling the special session;
- (3) the purposes of the special session;
- (4) the requested convening date and time of the special session;
- (5) the date by which legislators must return the ballot which may not be more than thirty (30) days after the date of the mailing of the ballots; and
- (6) a stamped return envelope.

**History:** En. Sec. 4, Ch. 433, L. 1973.

**43-323. Legislative call of immediate special session.** When ten (10) legislators consider an immediate special session necessary, they may request the secretary of state to notify each legislator by the fastest available means. The notification shall include the names of the legislators making the request, the conditions which necessitate the call, and the proposed date and time of convening. Each legislator shall send a letter to the secretary of state approving or rejecting the call for a special session. The letter is a legal ballot.

**History:** En. Sec. 5, Ch. 433, L. 1973.

**43-324. Notice of date special session is to convene.** If a majority of the legislators reply affirmatively to the poll, the secretary of state shall notify each legislator of the time and day on which the special session shall convene.

**History:** En. Sec. 6, Ch. 433, L. 1973.

**43-325. Effect of failure to approve special session.** If a majority of the legislators fail to approve the call for a special session within thirty (30) days after the secretary of state mails the ballots or notifies each legislator, all ballots are void and may not be used again. The entire process must be repeated to call the legislature into special session.

**History:** En. Sec. 7, Ch. 433, L. 1973.

**Effective Date**

Section 8 of Ch. 433, Laws 1973 pro-

vided the act should be in effect from and after its passage and approval. Approved March 22, 1973.

**CHAPTER 5—STATUTES—THEIR ENACTMENT AND OPERATION—GOVERNOR'S APPROVAL OR VETO**

- Section 43-501. Bills received by the governor, how endorsed.  
 43-502. Approval of bills, line item and amendatory vetoes.  
 43-504. Return when legislature not in session.  
 43-505. Bills remaining with the governor.  
 43-508. "Final passage," meaning of.  
 43-516. Enacting clause—form required.  
 43-517. Financing new local government duties.  
 43-518. Not applicable to certain legislation.

**43-501. (84) Bills received by the governor, how endorsed.** Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, initiative and referendum measures, shall be submitted to the governor for his signature. Each bill must, as soon as delivered to the governor, be endorsed as follows: "This bill was received by the governor this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_." The endorsement must be signed by an assistant authorized by the governor, or by the governor himself.

**History:** En. Sec. 270, Pol. C. 1895; re-en. Sec. 100, Rev. C. 1907; re-en. Sec. 84, R. C. M. 1921; amd. Sec. 1, Ch. 31, L. 1973. Cal. Pol. C. Sec. 309.

**Amendments**

The 1973 amendment inserted a new first sentence; substituted "an assistant authorized by the governor" in the final sentence for "the private secretary of the governor"; and made a minor change in phraseology.

**43-502. (85) Approval of bills, line item and amendatory vetoes.**  
 (1) When the governor approves a bill he must set his name thereto, with the date of his approval, and deposit the same in the office of the secretary of state.

(2) If any bill presented to the governor contains several distinct items of appropriation of money, he may disapprove one or more items, while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and his objections thereto. The governor must transmit to the house in which the bill originated (or to the secretary of state if the



legislature is not in session) a copy of such statement, and the items so objected to must be separately reconsidered in the same manner as bills which have been disapproved by the governor.

(3) The governor may return any bill to the originating house with his recommendations for amendment. Such house shall reconsider the bill under its rules relating to amendment offered in committee of the whole. The bill is then subject to the following procedures:

(a) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in committee of the whole, the bill and the originating house's approval or disapproval of the governor's recommendations.

(b) If both houses approve the governor's recommendations the bill shall be returned to the governor for his reconsideration.

(c) If both houses disapprove the governor's recommendations the bill shall be returned to the governor for his reconsideration.

(d) If one house disapproves the governor's recommendations and the other house approves, then either house may request a conference committee which may be a free conference committee.

(i) If both houses adopt a conference committee report, the bill in accordance with the report shall be returned to the governor for his reconsideration.

(ii) If a conference committee fails to reach agreement or if its report is not adopted by both houses the governor's recommendations shall be considered not approved and the bill shall be returned to the governor for further consideration.

(e) The governor may not return the bill for amendment a second time.

**History:** En. Sec. 271, Pol. C. 1895; re-en. Sec. 101, Rev. C. 1907; re-en. Sec. 85, R. C. M. 1921; amd. Sec. 1, Ch. 157, L. 1973. Cal. Pol. C. Sec. 310.

#### **Amendments**

The 1973 amendment divided the former section into subsections (1) and (2); deleted "if the legislative assembly be in session," and inserted the parenthetical phrase in the last sentence of subsection (2); and added subsection (3).

**43-504. (87) Return when legislature not in session.** (1) If, on the day the governor desires to return a bill without his approval, and with his objections thereto, to the house in which it originated, that house has adjourned for the day (but not for the session), he may deliver the bill with his message to the presiding officer, secretary, clerk, or any member of such house, and such delivery is as effectual as though returned in open session, if the governor, on the first day the house is again in session, by message, notifies it of such delivery, and of the time when and the person to whom such delivery was made.

(2) If the legislature is not in session when the governor vetoes a bill he shall return the bill with his reasons for the veto to the secretary of state. The secretary of state shall immediately mail a copy of the bill and the veto message to each member of the legislature.

(3) The legislature may reconvene to reconsider any bill so vetoed by using the statutory procedure provided for convening in special session.

**History:** En. Sec. 273, Pol. C. 1895; re-en. Sec. 103, Rev. C. 1907; re-en. Sec. 87, R. C. M. 1921; amd. Sec. 1, Ch. 63, L. 1973. Cal. Pol. C. Sec. 312.

#### Amendments

The 1973 amendment designated the former provisions as subdivision (1); and added new subdivisions (2) and (3).

**43-505. (88) Bills remaining with the governor.** Every bill which has passed both houses of the legislature, and has not been returned by the governor within five (5) days after its delivery to him if the legislature is in session or within twenty-five (25) days if the legislature is adjourned, thereby becoming a law, is authenticated by the governor causing the fact to be certified thereon by the secretary of state, in the following form: "This bill having remained with the governor five (5) days, and the legislature being in session, it has become a law this ----- day of -----, A. D. -----," or "This bill having remained with the governor twenty-five (25) days, and the legislature being adjourned, it has become a law this ----- day of -----, A. D. -----," which certificate must be signed by the secretary of state and deposited with the laws in his office.

**History:** En. Sec. 274, Pol. C. 1895; re-en. Sec. 104, Rev. C. 1907; re-en. Sec. 88, R. C. M. 1921; amd. Sec. 1, Ch. 30, L. 1973. Cal. Pol. C. Sec. 313.

#### Amendments

The 1973 amendment substituted "legislature" for "legislative assembly" in the first sentence; inserted "after its delivery to him if the legislature is in session or within twenty-five (25) days if the legislature is adjourned" in the preliminary

clause; deleted "(Sundays excepted)" after "five (5) days" in the form; inserted the alternative certification by the secretary of state in the event of the legislature's adjournment; and made minor changes in style.

#### Repealing Clause

Section 2 of Ch. 30, Laws 1973 read "Section 43-506, R. C. M. 1947, is repealed."

### 43-506. (89) Repealed.

#### Repeal

Section 43-506 (Sec. 275, Pol. C. 1895), relating to the effect of final adjournment

on bills, was repealed by Sec. 2, Ch. 30, Laws 1973. For new law, see sec. 43-505.

**43-508. (91) "Final passage," meaning of.** The words "final passage," as used in the preceding section, shall be held to mean the enactment into law of a bill which has passed the legislative assembly, either with or without the approval of the governor, as provided in the constitution.

**History:** En. Sec. 3467, C. Civ. Proc. 1895; re-en. Sec. 8075, Rev. C. 1907; re-en. Sec. 91, R. C. M. 1921; amd. Sec. 20, Ch. 100, L. 1973.

#### Amendments

The 1973 amendment deleted "section 12 of article VII of" before "the constitution" at the end of the section.

### 43-514. (97) Repeal of laws creating criminal offenses, etc.

#### Constitutionality

This section is to be interpreted so as to preserve for prosecution all criminal offenses committed prior to repeal, in ab-

sence of an express legislative intent to contrary contained in repealing act, irrespective of whether charges are filed before or after such repeal; such interpre-

tation does not violate article III, section 11 of constitution as ex post facto legisla-

tion. State ex rel. Huffman v. District Court, 154 M 201, 461 P 2d 847.

**43-516. Enacting clause—form required.** The enacting clause of every law shall be as follows: "Be it enacted by the Legislature of the State of Montana:".

**History:** En. Sec. 1, Ch. 7, L. 1974.

**Title of Act**

An act requiring every statute to begin with an enacting clause and prescribing the form of that clause; and providing an effective date.

**Effective Date**

Section 2 of Ch. 7, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved February 5, 1974.

**43-517. Financing new local government duties.** Any law enacted by the legislature after July 1, 1974, which requires a local government unit to perform an activity or provide a service or facility which will require the direct expenditure of additional funds must provide a means to finance the activity, service or facility. The means of financing such activity may be through a general, all purpose or special levy or through remission of funds by the state of Montana to said local government unit, provided, however, that any requirement in such law that financing be made from the local government unit's levy authority must also provide authority therein to increase said levy by an amount necessary to finance said program, and provided further, that if financing is provided by remission of funds by the state of Montana, such remission shall bear a reasonable relationship to the actual cost of performing the activity or providing the service or facility. The local government unit may refuse to administer or enforce any law which does not comply with the requirements of this section if that law requires an expenditure that would require the local government unit to exceed its statutory levy authority. No subsequent legislation shall be deemed to supersede or modify any provision of this act, whether by implication or otherwise, except to the extent that such legislation shall do so expressly.

**History:** En. 43-517 by Sec. 1, Ch. 275, L. 1974.

**Title of Act**

An act requiring that any law requiring

local government to administer any program or provide any service include a method of financing such program or service.

**43-518. Not applicable to certain legislation.** This act shall not apply to any law under which the required expenditure of additional local funds is incidental to the main purpose of the law.

**History:** En. 43-518 by Sec. 2, Ch. 275, L. 1974.

## CHAPTER 7—LEGISLATIVE COUNCIL

Section 43-709. Legislative council—members—term—vacancies.

43-710. Powers and duties.

43-711. Executive director—personnel—standing and select committees.

43-711.1. Printing of the house and senate journals and session laws.

43-711.2. Distribution of senate and house journals and session laws.

43-711.3. Publication of laws—index.

43-711.4. Description of county boundaries included in session laws.

43-711.5. Expenses incurred, how paid.



- 43-712. Power to investigate and examine.
- 43-713. Hearings—oaths, subpoenas, compelling attendance of witnesses and production of records—contempt proceedings.
- 43-714. Expenses.
- 43-715. Organization—officers—rules of procedure and records.
- 43-716. Appointment of subcommittees—composition—functions—resignation for failure to attend meetings or hearings.
- 43-717. Legislative committee on priorities—composition—functions.
- 43-718. Activities of committees while legislature not in session.
- 43-719. Determination of actions of standing committees by committee on priorities.
- 43-720. Popular name.
- 43-721. Establishment of program.
- 43-722. Term of service.
- 43-723. Number of interns—where from.
- 43-724. Selection by schools.
- 43-725. Intern qualifications.
- 43-726. Assignment of interns.
- 43-727. Legislative council—establish guidelines.
- 43-728. Interns responsible to sponsor.
- 43-729. Program not mandatory.
- 43-730. Funding not obligatory.
- 43-731. Severability.

**43-709. Legislative council — members — term — vacancies.** There is hereby created a legislative council which consists of four (4) members of the house of representatives who shall be appointed by the speaker of the house of representatives, with the advice of the majority and minority leaders of the house no more than two (2) of whom shall be of the same political party, and four (4) members of the state senate who shall be appointed by the committee on committees of the state senate, no more than two (2) of whom shall be of the same political party. Membership on the council shall be for two (2) years and terminates with appointment of a new council or on the fiftieth legislative day of the first regular session following the biennium in which the appointment was made, whichever event occurs first. A new council shall be appointed no later than the fiftieth day of each succeeding first regular session. Any vacancy on said legislative council occurring when the legislature is not in session shall be filled by the selection of another member by the same method as the original appointment.

**History:** En. Sec. 1, Ch. 34, L. 1957;  
amd. Sec. 1, Ch. 431, L. 1973.

#### **Amendments**

The 1973 amendment reduced the number of council members from six to four for each house; preserved the even division of party membership; inserted "with the advice of the majority and minority leaders of the house" in the clause relating to appointment of house members; deleted a second sentence relating to time of appointment of the first members;

advanced the time for selection of members from the sixtieth to the fiftieth legislative day; provided for termination of membership on the fiftieth legislative day or on the appointment of a new council, rather than December 31 or the termination of a term of office; provided for the filling of vacancies "by the same method as the original appointment" rather than by the remaining members of the council; and made minor changes in arrangement and phraseology.

**43-710. Powers and duties.** (1) If a question of state-wide importance arises when the legislature is not in session and a subcommittee has not been appointed to consider the question, the legislative council shall, with the concurrence of the priorities committee, assign such question to an appropriate subcommittee.

(2) The legislative council shall supervise the activities of the council staff.

(3) The legislative council shall assist in the preparation and submission of all standing and select committee and subcommittee reports and recommendations to the legislature.

(4) This section shall not be construed to permit the council to approve or disapprove of any substantive portions or recommendations of a standing and select committee and subcommittee report.

History: En. Sec. 2, Ch. 34, L. 1957;      Amendments  
amd. Sec. 2, Ch. 431, L. 1973.

The 1973 amendment completely rewrote this section. For prior law, see parent volume.

**43-711. Executive director — personnel — standing and select committees.** (1) The legislative council may employ an executive director and such other personnel, not members of the council, as it deems necessary to assist in the preparation of standing and select committee and subcommittee reports and recommendations, proposed legislative acts and any other activities and shall fix the compensation of such employees. It shall further have the power to employ the services of any research agency which it deems necessary in the discharge of its duties.

(2) The legislative council may establish functional divisions within the council staff in order to carry out all of the responsibilities delegated to the council by law or legislative rule, and shall include the following:

- (a) Legislative services division;
  - (i) engrossing and enrolling,
  - (ii) mailroom,
  - (iii) printing;
- (b) Research and reference services division;
  - (i) general and specialized legislative research,
  - (ii) legislative reference and information, including preparation and publication of the Legislative Review to be sold at the cost of the publication plus postage,
  - (iii) committee staffing when the legislature is not in session;
- (c) Legal services division;
  - (i) bill drafting,
  - (ii) legal counseling,
  - (iii) this division is authorized to assign code section numbers and catch lines to bills which have passed both houses without catch lines or section numbers prior to the enrolling process.
- (d) Management and business services division;
  - (i) maintain bookkeeping records,
  - (ii) sign claims and payrolls,
  - (iii) order all printing, supplies, and equipment,
  - (iv) serve house and senate during the session.

History: En. Sec. 3, Ch. 34, L. 1957;  
amd. Sec. 3, Ch. 431, L. 1973; amd. Sec. 1,  
Ch. 30, L. 1974.

Amendments  
The 1973 amendment divided the section into numbered subsections; substi-

tuted "standing and select committee and subcommittee reports and recommendations" for "its recommendations" in the first sentence of subsection (1); and substituted a new subsection (2) for a paragraph authorizing the appointment and providing for the work of special committees.

The 1974 amendment inserted subdivision (2)(c)(iii); and made a minor change in punctuation.

#### Effective Date

Section 2 of Ch. 30, Laws 1974 read "This act is effective on its passage and approval but shall be automatically terminated and repealed one (1) year from the date of its approval or upon the passage, approval and implementation of the Montana Codes Commissioner Act, which shall supersede this act."

**43-711.1. Printing of the house and senate journals and session laws.** In addition to the duties prescribed in section 43-711, the legislative services division of the legislative council shall deliver to the printer entitled to the same, at the earliest day practicable after the final adjournment of each session of the legislative assembly, copies of all laws, resolutions, and journals, kept, passed, or adopted at such session, with proper indexes to the same.

**History:** En. 43-711.1 by Sec. 3, Ch. 96, L. 1973.

#### Title of Act

An act to amend sections 82-2202, 82-2203, 82-2208, 82-2211 and 82-2212, R. C. M. 1947, to transfer the functions of

the secretary of state relating to printing and distribution of the house and senate journals and session laws to the legislative services division of the legislative council; deleting from section 82-2210, R. C. M. 1947, references to sidenoting; repealing section 82-2204, R. C. M. 1947.

**43-711.2. (135) Distribution of senate and house journals and session laws.** Immediately after the senate and house journals and the session laws mentioned in section 43-711.1 are bound, the legislative services division of the legislative council must distribute the same.

It shall distribute the house and senate journals as follows:

1. To the county clerk of each county one copy of each for the use of the county.
2. To the state historical library such number of copies of both; not exceeding 150 of each, as may be required by it for purposes of distribution and exchange; to the state law librarian, two copies of each for the use of said library, and such additional copies as may be necessary for the purposes of exchange; and to the library of Congress, two copies of each.
3. To the lieutenant governor, each member of the legislative assembly, secretary of the senate and chief clerk of the house of representatives at the session at which the journals were adopted, one copy of each.

It shall distribute the session laws as follows:

1. To each department of the government at Washington, and of the government of this state, one copy.
2. To the library of Congress, eight copies; and to the state library, two copies.
3. To the state historical and miscellaneous library, two copies; to the state law librarian, four copies for the use of said state law library.
4. To the law libraries and the legislative reference libraries of each of the states and territories such number of copies as are given by them in exchange with the Montana state law library and the legislative reference libraries.



5. To the members of Congress, to the United States district judge, to each of the judges of the supreme and district courts, and to each of the state officers of the state, one copy.

6. To the lieutenant governor, each member of the legislative assembly, secretary of the senate, and chief clerk of the house of representatives at the session at which laws and journals were adopted, one copy.

7. To each of the incorporated colleges of the state and to each unit of the state university and institutions, one copy; to the law librarian of the state of Montana as many copies as may be required by him for exchange with libraries and institutions maintained by other states, territories and public libraries.

8. To the county clerk of each county, three copies for the use of the county.

9. To each county attorney, and to each clerk of the district court, one copy.

History: En. Sec. 1, Ch. 86, L. 1907; Sec. 155, Rev. C. 1907; amd. Sec. 1, Ch. 126, L. 1921; re-en. Sec. 135, R. C. M. 1921; amd. Sec. 1, Ch. 22, L. 1929; amd. Sec. 1, Ch. 46, L. 1937; Sec. 82-2203, R. C. M. 1947; reds. 43-711.2 and amd. by Sec. 4, Ch. 96, L. 1973.

#### Amendments

The 1973 amendment renumbered this section, which was formerly section 82-

2203; substituted the legislative services division of the legislative council for the secretary of state; substituted the reference in the preliminary paragraph to section 43-711.1 for a reference to former subdivision 9 of section 82-2202; inserted "It shall distribute the house and senate journals as follows:" immediately before the first group of numbered paragraphs; and made minor changes in phraseology.

43-711.3. (142) **Publication of laws—index.** The legislative services division of the legislative council, in pursuance of section 43-711.1, shall cause such laws as are therein specified, except resolutions, memorials, and bills appropriating money, to be printed with the heading of each law,

## CHAPTER \_\_\_\_\_

numbered from 1 upward, using Arabic numerals for such numbering, and it shall omit from the laws the statement "Senate Bill No. \_\_\_\_\_" and "House Bill No. \_\_\_\_\_" and hereafter reference to the laws of any legislative session may be made as follows: "Chapter \_\_\_\_\_ (giving number) of the laws of \_\_\_\_\_" (giving the year in which same was enacted). Such laws shall be published in their numerical order, from 1 upward, as same have been filed in the office of the secretary of state, and the chapter number shall appear as part of each page heading; provided, that resolutions, memorials, and bills appropriating money shall be printed in the latter part of the volume containing the said laws, in the form and manner heretofore practiced in publishing such laws; and provided further, in all enrolled bills containing amendments to existing statutes, the new parts having been designated by underlining, shall be printed in italics. The legislative services division of the legislative council shall also have prepared and published with said laws, and bound in the same volume, a suitable index of the same, and an additional index showing what sections of the several codes of this state have been

amended, repealed, altered, or changed by any of the laws published in that volume, which shall be known and designated as the "Code Index."

**History:** En. Sec. 2, Ch. 17, L. 1903; re-en. Sec. 163, Rev. C. 1907; re-en. Sec. 142, R. C. M. 1921; amd. Sec. 1, Ch. 10, L. 1939; Sec. 82-2210, R. C. M. 1947; amd. Sec. 1, Ch. 59, L. 1973; redes. 43-711.3 and amd. by Sec. 5, Ch. 96, L. 1973.

#### Compiler's Notes

This section was amended twice in 1973, once by Ch. 59, and once by Ch. 96. Neither amendatory act mentioned the other. Since Ch. 96 included the changes made by Ch. 59, the compiler has used the text of Ch. 96.

#### Amendments

Chapter 59, Laws of 1973, deleted from the second sentence a requirement that the laws be published "in such manner that each section shall have a side head or marginal summary"; and made a minor change in style.

Chapter 96, Laws of 1973, renumbered this section, which was formerly section 82-2210; made the same changes as did

Ch. 59; substituted the legislative services division of the legislative council for the secretary of state at the beginning of the section and at the beginning of the last sentence; substituted the reference to section 43-711.1 near the beginning of the section for a reference to former subdivision 9 of section 82-2202; and made minor changes in phraseology.

#### Repealing Clause

Section 2 of Ch. 59, Laws 1973 read "Section 82-2204, R. C. M. 1947, is repealed."

#### Effective Date

Section 3 of Ch. 59, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved February 25, 1973.

#### Cross-References

Index to session laws, preparation, 44-411.

**43-711.4. (143) Description of county boundaries included in session laws.** It shall be the duty of the legislative services division of the legislative council to include in the published session laws of the state of Montana a description of the county boundaries of all new counties of the state of Montana created by petition and election, commencing with counties so created on and after January 1, 1921, inserting in each of said session laws such new counties as have been so created since the publication of the acts of the previous session.

**History:** En. Sec. 1, Ch. 67, L. 1921; re-en. Sec. 143, R. C. M. 1921; Sec. 82-2211, R. C. M. 1947; redes. 43-711.4 and amd. by Sec. 6, Ch. 96, L. 1973.

#### Amendments

The 1973 amendment renumbered this

section, which was formerly section 82-2211; substituted the legislative services division of the legislative council for the secretary of state; and made a minor change in phraseology.

**43-711.5. (144) Expenses incurred, how paid.** The expenses incurred by the legislative services division of the legislative council in carrying into effect the provisions of sections 43-711.1 to 43-711.4 inclusive must be paid out of any moneys specially appropriated for the purpose.

**History:** En. Sec. 409, Pol. C. 1895; re-en. Sec. 164, Rev. C. 1907; re-en. Sec. 144, R. C. M. 1921; Sec. 82-2212, R. C. M. 1947; amd. Sec. 30, Ch. 97, L. 1961; redes. 43-711.5 and amd. by Sec. 7, Ch. 96, L. 1973.

#### Amendments

The 1973 amendment renumbered this section, which was formerly section 82-2212; substituted the legislative services

division of the legislative council for the secretary of state; and substituted the reference to sections 43-711.1 to 43-711.4 for a reference to sections 82-2202 to 82-2204.

#### Repealing Clause

Section 8 of Ch. 96, Laws 1973 read "Section 82-2204, R. C. M. 1947, is repealed."

**43-712. Power to investigate and examine.** The legislative council, on behalf of standing and select committees and subcommittees, shall have authority to investigate and examine into the costs of state governmental activities and may examine and inspect all records, books and files of any department, agency, commission, board or institution of the state of Montana.

**History:** En. Sec. 4, Ch. 34, L. 1957; half of standing and select committees  
amd. Sec. 4, Ch. 431, L. 1973. and subcommittees" near the beginning of the section.

**Amendments**

The 1973 amendment inserted "on be-

**43-713. Hearings—oaths, subpoenas, compelling attendance of witnesses and production of records—contempt proceedings.** In the discharge of its duties on behalf of standing committees and subcommittees, the legislative council shall have authority to hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses, and the production of any papers, books, accounts, documents and testimony, and to cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court. In case of disobedience on the part of any person to comply with any subpoena issued by the council on behalf of a standing committee or subcommittee or of the refusal of any witness to testify on any matters regarding which he may be lawfully interrogated, it shall be the duty of the district court of any county or the judge thereof, on application of the legislative council to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court on a refusal to testify therein.

**History:** En. Sec. 5, Ch. 34, L. 1957; sentence; and substituted "subpoena is-  
amd. Sec. 5, Ch. 431, L. 1973. sued by the council on behalf of a stand-  
ing committee or subcommittee" in the  
second sentence for "subpoena issued on  
behalf of the council, or any committee  
thereof."

**Amendments**

The 1973 amendment inserted "on be-  
half of standing committees and subcom-  
mittees" near the beginning of the first

**43-714. Expenses.** When the legislature is not in session, members of the legislative council, the legislative subcommittees, select and standing committees, while going to, attending, and returning from legislative committee meetings and other necessary committee business authorized by the chairman of the legislative council are entitled to:

- (1) a mileage allowance as allowed by law,
- (2) actual expenses, and
- (3) compensation as provided by law.

**History:** En. Sec. 6, Ch. 34, L. 1957; **Amendments**  
amd. Sec. 6, Ch. 431, L. 1973.

The 1973 amendment completely re-  
wrote this section. For prior law, see  
parent volume.

**43-715. Organization—officers—rules of procedure and records.** The legislative council shall organize immediately following appointment by



electing one (1) of its members as its chairman and by electing such other officers from among its membership as the council may deem desirable. The council is empowered to adopt rules of procedure and to make all arrangements for its meetings and to carry out the purpose for which it is created. The council and the subcommittees are directed to keep accurate records of their activities and proceedings.

**History:** En. Sec. 7, Ch. 34, L. 1957; amd. Sec. 7, Ch. 431, L. 1973.

**Amendments** — 1973

The 1973 amendment substituted "immediately following appointment" for

"within thirty (30) days after the passage and approval of this act" near the beginning of the first sentence; and substituted "the subcommittees" for "its committees" near the beginning of the last sentence.

**43-716. Appointment of subcommittees — composition — functions — resignation for failure to attend meetings or hearings.** (1) The standing committees of the house and senate shall appoint subcommittees from each body to meet jointly on those bills and resolutions as designated to them by the priorities committee. The subcommittees shall be composed as follows:

(a) four (4) members of the house standing committee appointed by the chairman of the standing committee, no more than two (2) of whom may be of one political party; and

(b) four (4) members of the senate standing committee appointed by the chairman of the standing committee, no more than two (2) of whom may be of one political party.

(2) The chairman of the standing committee may appoint himself to the subcommittee.

(3) The subcommittee shall elect its chairman and vice-chairman from among its members. The chairman and vice-chairman may not be members of the same political party.

(4) The subcommittees may perform their functions when the legislature is not in session and the personnel, data and facilities of the legislative council shall be made available to such subcommittees.

(5) The subcommittees shall accumulate, compile, analyze and furnish such information bearing upon any matters relating to existing or prospective legislation as may be determined by it upon its own initiative pertaining to important issues of policy and questions of statewide importance, including but not limited to investigation and study of the possibilities of consolidations of departments, commissions, boards and institutions in state government for the elimination of unnecessary activities and duplications in office personnel and equipment, for the co-ordination of activities, for the purpose of increasing efficiency of service or effecting economies, and for the purpose of studying and inquiring into the financial administration of state governments and subdivisions thereof, including the problems of assessment and collection of taxes, and all other matters pertaining to the function of all departments and branches of state government.

(6) The subcommittees shall prepare such bills and resolutions as in its opinion the welfare of the state may require for presentation to the next regular session of the legislative assembly.

(7) Any subcommittee appointed for the purpose of considering deferred bills may make recommendations regarding the disposition of such bills. Prior to the next session, these recommendations may be submitted to the standing committee having jurisdiction over the bill when the preceding session was adjourned. After having considered the subcommittee recommendations the standing committee may perfect a committee report on the bill to be presented to the legislature on the first legislative day of the next session.

(8) Any subcommittee appointed for the purpose of making a study assigned by the priorities committee may make recommendations for legislation. These recommendations and the study report shall be submitted to the legislature at the session designated by the resolution or the priorities committee.

(9) If any subcommittee member should miss more than two (2) committee meetings or hearings without just cause when the legislature is not in session, the member is deemed to have resigned and the vacancy shall be filled in the same manner as the original appointment. Any other vacancy shall be filled in the same manner.

**History:** En. 43-716 by Sec. 8, Ch. 431, L. 1973; amd. Sec. 1, Ch. 44, L. 1974.

#### **Title of Act**

An act reducing the membership of the legislative council to eight (8) members and providing terms; providing for council organization, powers and duties; providing for appointment of subcommittees; providing for powers and duties of select and standing committees when the legislature is not in session; providing compensation for council members and committees; providing for a priorities committee to determine interim studies; and amending sections 43-709 through 43-715, R. C. M. 1947.

#### **Amendments**

The 1974 amendment substituted "may" for "shall" before "be submitted" in the second sentence of subdivision (7); deleted the second sentence from subdivision (8) reading "These recommendations and the study report shall be submitted to the full joint standing committees prior to the legislative session in which the report is to be made for approval by the joint standing committee"; and substituted "These recommendations and the study report shall be submitted" at the beginning of the last sentence of subdivision (8) for "The approved report and recommendations shall be made."

### **43-717. Legislative committee on priorities—composition—functions.**

(1) There is created a legislative committee on priorities which shall be composed of eight (8) members of the house rules committee, four (4) of whom shall be of the same political party, and eight (8) members of the senate rules committee, four (4) of whom shall be of the same political party.

(2) The committee on priorities shall be appointed at the same time as all other standing committees.

(3) The committee on priorities shall consider resolutions requesting council studies and all other study requests and establish and prepare a list of priorities from among them. They shall also set priorities on all bills and studies carried over to the second regular session. The committee shall transmit the list to the legislative council before the end of each regular session and shall assign the bills and studies to the appropriate standing committee in the order in which the studies and bills appear on

the list of priorities. The committee shall assign as many studies and bills as the resources of the council staff allows.

History: En. 43-717 by Sec. 9, Ch. 431, L. 1973.

**43-718. Activities of committees while legislature not in session.** During an interim when the legislature is not in session, all regularly appointed standing or select committees of either house not formally discharged prior to the final adjournment of the preceding session shall continue as such committees, and are empowered to continue to sit as such committees as provided in this act.

History: En. Sec. 10, Ch. 431, L. 1973.

**43-719. Determination of actions of standing committees by committee on priorities.** Before the close of any regular or special session of the biennium except for the last session of the biennium, the chairman of each standing committee shall designate to the committee on priorities the bills then pending before them. The committee on priorities shall determine whether such standing committee may act upon the legislation designated, and if the committee on priorities determines that the standing or select committee is not to act upon such legislation, it shall so inform the appropriate chairman, and that committee shall not then act upon such legislation. Such decisions of the committee on priorities shall be reported to the respective chairmen before the fifty-eighth legislative day of the first regular session, and the chairman of the select or standing committee involved may appeal the decision to the house of which he is a member, and if that house overturns the decision of the committee on priorities, the select or standing committee may act during the interim on the legislation in question.

History: En. Sec. 11, Ch. 431, L. 1973.

**Effective Date**

Section 12 of Ch. 431, Laws 1973 read "This act is effective upon its passage and

approval, provided that in the first regular session of the 43rd legislative assembly the time limits referred to in this act shall not apply."

**43-720. Popular name.** This act shall be known as the "Legislative Intern Act of 1974."

History: En. 43-720 by Sec. 1, Ch. 305, L. 1974.

**Title of Act**

An act to codify the existence of the

legislative intern program to be known as the "Legislative Intern Act of 1974"; and providing an effective date.

**43-721. Establishment of program.** It is declared to be the public policy of this state that there be a legislative intern program open to students attending the university of Montana, Montana state university, eastern Montana college, northern Montana college, western Montana college, Montana college of mineral science and technology. The private colleges of higher education in the state may also establish an intern program for the purposes of this act.

History: En. 43-721 by Sec. 2, Ch. 305, L. 1974.



**43-722. Term of service.** Each legislative intern shall serve for ten (10) weeks during the regular session of the legislature.

History: En. 43-722 by Sec. 3, Ch. 305,  
L. 1974.

**43-723. Number of interns—where from.** All institutions referred to in section 2 [43-721] may have at least one intern. An additional five (5) positions may be chosen from applications submitted to the legislative council.

History: En. 43-723 by Sec. 4, Ch. 305,  
L. 1974.

**43-724. Selection by schools.** The legislative interns shall be named by the presidents of the several colleges and universities. The students so selected may be enrolled in any program offered by the college or university.

History: En. 43-724 by Sec. 5, Ch. 305,  
L. 1974.

**43-725. Intern qualifications.** The legislative interns must have the following qualifications:

(1) at least one (1) quarter of "state government" or its equivalent as a course of study at an institution of higher learning;

(2) reached at least the level of a junior at an institution of higher learning;

(3) exhibit the necessary degree of scholastic achievement, leadership, and involvement in community affairs; and

(4) preference shall be given to Montana high school graduates.

History: En. 43-725 by Sec. 6, Ch. 305,  
L. 1974.

**43-726. Assignment of interns.** Each legislative intern is assigned to a legislator by the legislative council.

History: En. 43-726 by Sec. 7, Ch. 305,  
L. 1974.

**43-727. Legislative council—establish guidelines.** Each legislative intern is subject to guidelines established by the legislative council.

History: En. 43-727 by Sec. 8, Ch. 305,  
L. 1974.

**43-728. Interns responsible to sponsor.** Each legislative intern is directly responsible to his or her legislator.

History: En. 43-728 by Sec. 9, Ch. 305,  
L. 1974.

**43-729. Program not mandatory.** An institution of higher learning may choose not to participate in the legislative intern program.

History: En. 43-729 by Sec. 10, Ch. 305,  
L. 1974.

**43-730. Funding not obligatory.** The legislature shall not, under any condition, because of this act, be obligated to fund this internship program.

History: En. 43-730 by Sec. 12, Ch. 305, L. 1974.

**43-731. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

History: En. 43-731 by Sec. 11, Ch. 305, L. 1974.      vided the act should be in effect from and after its passage and approval. Approved March 25, 1974.

**Effective Date**

Section 13 of Ch. 305, Laws 1974 pro-

## CHAPTER 8—LOBBYING

Section 43-803. Licensing of lobbyists—fee—expiration, suspension or revocation—reinstatement.

**43-803. Licensing of lobbyists—fee—expiration, suspension or revocation—reinstatement.** (1) Licenses—fees—eligibility. Any person of adult age and good moral character who is a citizen of the United States and otherwise qualified under this act may be licensed as a lobbyist as herein provided. The secretary of state shall provide for the form of application for license. Such application may be obtained in the office of the secretary of state and filed therein. Upon approval of such application and payment of the license fee of ten dollars (\$10.00) to the secretary of state, a license shall be issued which shall entitle the licensee to practice lobbying on behalf of any one or more principals. Each license shall expire on December 31 of each odd-numbered year. No application shall be disapproved without affording the applicant a hearing which shall be held and decision entered within ten (10) days, of the date of filing of the application. The license fees collected by the secretary of state under this act shall be deposited by him in the state treasury.

(2) Suspension or revocation of license. Upon verified complaint in writing to the attorney general of the state of Montana charging the holder of a license with having been guilty of unprofessional conduct or with having procured his license by fraud or perjury or through error, the attorney general is hereby authorized to bring civil action in the district court for Lewis and Clark county, state of Montana, against the holder and in the name of the state as plaintiff to revoke the license. Hearing shall be held by the court unless the defendant-licensee demands a jury trial. The trial shall be held as soon as possible and at least twenty (20) days after the filing of the charges and shall take precedence over all other matters pending before the court. If the court finds for the plaintiff judgment shall be rendered revoking the license, and the clerk of the court shall file a certified copy of the judgment with the secretary of state. The licensing authority may commence any such action on his own motion.

## (3). \* \* \* [Same as parent volume.]

History: En. Sec. 3, Ch. 157, L. 1959; amd. Sec. 3, Ch. 248, L. 1965.

**Amendment**

The 1965 amendment deleted "in a special fund to be known as the 'Lobby Li-

cense Fund' which fund is to be expended in the manner hereinafter provided" at the end of subsection (1); and deleted from subsection (2) a former fifth sentence which read: "Costs shall be paid from the 'Lobby License Fund'."

## CHAPTER 9—LEGISLATIVE PROCEEDINGS—DISSEMINATION

- Section 43-901. Definitions.  
 43-902. Schedule of fees.  
 43-903. Exclusions.  
 43-904. Exemptions—public officials.

**43-901. Definitions.** For the purposes of this act, the following definitions are adopted.

1. "Person" shall include any person, firm, corporation or association.
2. "Proceedings of the legislature" shall include status sheets, daily journal, reproduced bills, reproduced resolutions, reproduced memorials, printed bills, printed resolutions and printed memorials and amendments thereto.

3. "One complete set" is one copy of each item of the proceedings of a session, regular or special, of the legislature.

History: En. Sec. 1, Ch. 223, L. 1959; amd. Sec. 1, Ch. 12, L. 1973; amd. Sec. 1, Ch. 292, L. 1974.

The 1974 amendment inserted "a session, regular or special, of" in subdivision 3.

**Amendments**

The 1973 amendment substituted "daily journal" in subdivision 2 for "status of proceedings"; substituted "reproduced" for "mimeographed" in three places in subdivision 2; and made a minor change in style.

**Effective Date**

Section 2 of Ch. 12, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved January 30, 1973.

**43-902. Schedule of fees.** (a) Any person desiring to receive one complete set of the proceedings of a regular session of the legislature shall pay to the secretary of state the amount prescribed in the joint legislative rules. Upon receipt of such money the secretary of state shall transmit the name of said person to the executive director of the legislative council, who shall supply such person with a complete set of the proceedings of the legislature. Any person desiring to receive more than one set of the proceedings of the legislature shall pay the session fee for each additional set.

(b) In addition to the fee for each complete set of the proceedings specified by subsection (a) of this section, any person who requests that a set of the proceedings be mailed shall pay an additional fee to the secretary of state for each complete set that is mailed of seventy-five dollars (\$75) if a person requests that the proceedings be mailed ordinary mail and one hundred dollars (\$100) if a person requests that the proceedings be mailed air mail.

(c) Any person desiring to receive single copies of mimeographed bills, mimeographed resolutions, printed bills, printed resolutions, or amendments thereto shall purchase them from the legislative services



division of the legislative council for a price varying with the length of the document as prescribed in the joint rules.

(d) Any person desiring to receive single copies of status sheets or status of proceedings may purchase them from the legislative services division of the legislative council for a price per copy as prescribed in the joint rules. A person may subscribe to receive daily copies of the status sheets or status of proceedings by mail, for a fee covering the actual costs of such service which the legislative council may fix.

(e) The executive director of the legislative council shall account for all funds collected under this section and transmit such funds to the treasurer of the state of Montana, who shall credit them to the general fund.

**History:** En. Sec. 2, Ch. 223, L. 1959; amd. Sec. 1, Ch. 14, L. 1967; amd. Sec. 1, Ch. 5, L. 1969; amd. Sec. 2, Ch. 292, L. 1974.

#### Amendments

The 1967 amendment added a new subsection (b) and designated former subsections (b) through (e) as present subsections (c) through (f).

The 1969 amendment, in subsection (b), substituted "seventy-five dollars (\$75)" for "fifty dollars (\$50)," "ordinary" for "first class" before "mail," and "one hundred dollars (\$100)" for "eighty dollars (\$80)"; and, in subsection (c), deleted references to "mimeographed memorials" and "printed memorials."

The 1974 amendment inserted "a regular session of the" in the first sentence of subsection (a) after "proceedings of"; substituted "the amount prescribed in the joint legislative rules" at the end of the first sentence of subsection (a) for "one hundred dollars (\$100.00)"; substituted "executive director of the legislative council" in the second sentence of subsection (a) for "clerk of the house of representatives and the secretary of the senate"; substituted "the session fee" in the third sentence of subsection (a) for "one hundred dollars (\$100.00)"; substituted "purchase them from \* \* \* in the joint rules" at the end of subsection (c) for "pay to the clerk of the house of representatives or the

secretary of the senate twenty-five cents (\$.25) per single copy"; rewrote subsection (d) which read "Any person desiring to receive single copies of status sheets or status of proceedings shall first pay to the clerk of the house of representatives or the secretary of the senate ten cents (10¢) per single copy"; deleted former subsection (e) which read "The chief clerk of the house of representatives and the secretary of the senate shall be responsible for accounting for all moneys received by them and shall transmit such funds received to the secretary of state before 5 p.m. each weekday. Any moneys received by them during Saturday, Sunday or evening sessions of the legislative assembly shall be held by them in a safe place and transmitted to the secretary of state upon the next business day"; redesignated former subsection (f) as (e); substituted "executive director of the legislative council" in subsection (e) for "secretary of state"; and substituted "section" in subsection (e) for "act."

#### Effective Dates

Section 2 of Ch. 14, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 2, 1967.

Section 2 of Ch. 5, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved January 29, 1969.

**43-903. Exclusions.** Representatives of general circulation newspapers, radio, and television who shall have first registered with the secretary of state shall be exempt from the provisions of section 43-902 and shall receive one complete set of the proceedings of the legislature without charge.

**History:** En. Sec. 3, Ch. 223, L. 1959; amd. Sec. 3, Ch. 292, L. 1974.

#### Amendments

The 1974 amendment substituted "general circulation newspapers" for "the press."

**43-904. Exemptions—public officials.** All elected state officials, state department heads, the state law library, and county clerks and recorders shall be exempted from the provisions of section 43-902.

**History:** En. Sec. 4, Ch. 223, L. 1959;  
amd. Sec. 4, Ch. 292, L. 1974.

**Amendments**

The 1974 amendment inserted "the state law library."

CHAPTER 10—FISCAL NOTES IN LEGISLATIVE BILLS

- Section 43-1001. Committee reports to include fiscal notes—need determined on introduction of bill.  
 43-1002. Department of administration to prepare note.  
 43-1003. Note referred to committee—distribution to legislators on report of bill.  
 43-1004. Contents of fiscal notes.  
 43-1005. Note requested by committee or house.  
 43-1006. Background information available to legislators.

**43-1001. Committee reports to include fiscal notes—need determined on introduction of bill.** All bills reported out of a committee of the legislative assembly having an effect on the revenues, expenditures or fiscal liability of the state, except appropriation measures carrying specific dollar amounts, shall include a fiscal note incorporating an estimate of such effect. Fiscal notes shall be requested by the presiding officer of either house, who shall determine the need for the note at the time of introduction.

**History:** En. Sec. 1, Ch. 53, L. 1965.

**Title of Act**

An act requiring the inclusion of a fiscal

note in all bills having an effect on the revenues, expenditures or fiscal liability of the state.

**43-1002. Department of administration to prepare note.** The department of administration, in co-operation with the agency or agencies affected by the bill, is responsible for the preparation of the fiscal note and shall return same within six (6) days. The department may request additional time to complete a note, which extension must be submitted to the presiding officer or committee requesting the note for approval.

**History:** En. Sec. 2, Ch. 53, L. 1965;  
amd. Sec. 1, Ch. 6, L. 1974; amd. Sec. 97,  
Ch. 326, L. 1974.

pear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

**Compiler's Notes**

This section was amended twice in 1974, once by Ch. 6 and once by Ch. 326. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not ap-

**Amendments**

Chapter 6, Laws of 1974, added the second sentence.

Chapter 326, Laws of 1974, substituted "department of administration" for "state budget director."

**43-1003. Note referred to committee—distribution to legislators on report of bill.** A completed fiscal note shall be submitted by the department of administration to the presiding officer who requested it, who shall refer it to the committee considering the bill. If the bill is printed, the note shall be mimeographed and placed on the members' desks.

**History:** En. Sec. 3, Ch. 53, L. 1965;  
amd. Sec. 97, Ch. 326, L. 1974.

**Amendments**

The 1974 amendment substituted "department of administration" in this section for "budget director."

**43-1004. Contents of fiscal notes.** Fiscal notes shall, where possible, show in dollar amounts the estimated increase or decrease in revenues or expenditures, costs which may be absorbed without additional funds, and long-range financial implications. No comment or opinion relative to merits of the bill shall be included; however, technical or mechanical defects may be noted.

**History:** En. Sec. 4, Ch. 53, L. 1965.

**43-1005. Note requested by committee or house.** A fiscal note also may be requested on a bill, as the joint rules of the senate and the house of representatives may allow, by:

- (1) A committee considering the bill, or
- (2) A majority of the members of the house in which the bill is to be considered, at the time of second reading; or
- (3) The sponsor through the presiding officer.

**History:** En. Sec. 5, Ch. 53, L. 1965; amd. Sec. 1, Ch. 11, L. 1974.

#### Amendments

The 1974 amendment inserted "as the joint rules of the senate and the house of representatives may allow" in the preliminary paragraph; deleted "providing,

however, section 5 [this section] of this act shall not apply six (6) days before the close of transmittal of bills and/or shall not apply after the fifty-fourth day"; at the end of subdivision (2); added subdivision (3); and made a minor change in phraseology.

**43-1006. Background information available to legislators.** The department of administration shall make available on request to any member of the legislative assembly all background information used in developing a fiscal note.

**History:** En. Sec. 6, Ch. 53, L. 1965; amd. Sec. 97, Ch. 326, L. 1974.

#### Amendments

The 1974 amendment substituted "department of administration" in this section for "budget director."

## CHAPTER 11—LEGISLATIVE FISCAL REVIEW COMMITTEE

- Section 43-1101.** Creation of committee—composition—appointments—vacancies.
- 43-1102.** Duties of committee.
- 43-1103.** Powers of committee.
- 43-1104.** Investigation of costs of state government.
- 43-1105.** Subpoena and related powers—contempt proceedings.
- 43-1106.** Reimbursement for expenses—per diem.
- 43-1107.** Officers—rules of procedure—meetings—records.
- 43-1108.** Fiscal analyst and other necessary staff.

**43-1101. Creation of committee—composition—appointments—vacancies.** There is hereby created a legislative fiscal review committee which shall consist of four (4) members of the house of representatives appointed by the speaker, no more than two (2) of whom shall be of the same political party; and four (4) members of the senate appointed by the committee on committees, no more than two (2) of whom shall be of the same political party. The first members of the legislative fiscal review committee shall be appointed not later than the sixtieth (60th) legislative day of the forty-first (41st) legislative session. New members of the



committee shall be appointed not later than the sixtieth (60th) legislative day of each succeeding session. Any vacancy occurring when the legislative assembly is not in session shall be filled by the selection of another member of the legislature by the remaining members of the committee.

**History:** En. Sec. 1, Ch. 376, L. 1969.

**Title of Act**

An act to create a legislative fiscal re-

view committee for the study of state government fiscal matters; specifying an immediate effective date.

**43-1102. Duties of committee.** The legislative fiscal review committee shall accumulate, compile, analyze, and furnish such information bearing upon the financial matters of the state as the legislative assembly, or the committee by its own initiative, shall determine relevant to issues of policy and questions of state-wide importance, including, but not limited to, investigation and study of the possibilities of effecting economy and efficiency in state government. The committee may also conduct studies inquiring into the financial administration of state government and any of its agencies, including problems of assessment and collection of taxes, and all other matters pertaining to the fiscal functions of all agencies and branches of state government.

**History:** En. Sec. 2, Ch. 376, L. 1969.

**43-1103. Powers of committee.** The legislative fiscal review committee may:

(1) Employ the services of any research agency deemed necessary to the discharge of the committee's duties;

(2) Appoint special subcommittees composed of legislators, private citizens, or both to study and inquire into any specific governmental problems, however, the work of subcommittees shall be performed under the supervision of the committee;

(3) Estimate revenue from existing and proposed taxes;

(4) Review the executive budget and budget requests of each state agency and institution including proposals for the construction of capital improvements;

(5) Make recommendations it deems desirable to the legislative assembly;

(6) Assist committees of the legislative assembly, and individual legislators, in compiling and analyzing financial information.

**History:** En. Sec. 3, Ch. 376, L. 1969.

**43-1104. Investigation of costs of state government.** The legislative fiscal review committee has authority to investigate and examine into the costs of state government activities and may examine all records, books, and files of any department, agency, commission, board, or institution of the state of Montana.

**History:** En. Sec. 4, Ch. 376, L. 1969.

**43-1105. Subpoena and related powers—contempt proceedings.** In the discharge of its duties, the legislative fiscal review committee shall

have authority to hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses, and the production of any papers, books, accounts, documents and testimony, and to cause depositions of witnesses to be taken in the manner prescribed by law in civil actions in the district court. In case of disobedience on the part of any person to comply with a subpoena issued on behalf of the committee, or of the refusal of any witness to testify on any matter regarding which he may be lawfully interrogated, it shall be the duty of the district court of any county or the judge thereof, on application of the legislative fiscal review committee, to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court on a refusal to testify therein.

**History:** En. Sec. 5, Ch. 376, L. 1969.

**43-1106. Reimbursement for expenses—per diem.** Members of the legislative fiscal review committee and its subcommittees shall be reimbursed for actual travel and other expenses incurred in the discharge of their duties, and may also receive per diem payments as authorized by law.

**History:** En. Sec. 6, Ch. 376, L. 1969.

**43-1107. Officers—rules of procedure—meetings—records.** The legislative fiscal review committee shall organize within thirty (30) days after the passage and approval of this act by electing one (1) of its members as chairman and by the election of other officers from the membership of the committee as it may deem desirable. The committee is empowered to adopt rules of procedure and to make all arrangements for its meetings to carry out the purposes for which it is created. The committee shall keep an accurate record of its activities and proceedings.

**History:** En. Sec. 7, Ch. 376, L. 1969.

**43-1108. Fiscal analyst and other necessary staff.** A fiscal analyst and other necessary staff shall be assigned to the committee by the legislative council. The council shall fix the salaries and define the duties of all the staff personnel.

**History:** En. Sec. 8, Ch. 376, L. 1969.

**Effective Date**

Section 9 of Ch. 376, Laws 1969 pro-

vided the act should be in effect from and after its passage and approval. Approved March 19, 1969.





## TITLE 44—LIBRARIES

- Chapter 1. The state library of Montana, 44-127, 44-131 to 44-139.  
2. Library systems, 44-212 to 44-215, 44-218 to 44-228.  
3. City free public libraries, Repealed—Section 12, Chapter 260, Laws of 1967.  
4. State law library, 44-403, 44-404, 44-410, 44-411.  
5. Historical society—library and museum, 44-516 to 44-529.  
6. Interstate library compact, 44-601, 44-602.

### CHAPTER 1—THE STATE LIBRARY OF MONTANA

- Section 44-127. State library commission created.  
44-131. Powers of state library commission.  
44-132. Definitions.  
44-133. Creation of distribution center—state library commission to make regulations.  
44-134. Depositing of state agency publications—additional copies—inter-library loan—sale publications.  
44-135. Depository contracts—eligibility requirements—standards.  
44-136. List of available publications.  
44-137. State agency lists of current publications.  
44-138. Restriction on general public distribution.  
44-139. Exempt state agencies and officers.

**44-127. (1575.1) State library commission created.** A commission is hereby created to be known as the state library commission. This commission shall consist of the librarian of the state university, the state superintendent of public instruction, ex officio member, and the three members to be appointed by the governor, who shall serve one, two and three years respectively. As these terms expire, annually thereafter one person shall be appointed, for a term of three years. The commission shall annually elect a chairman from its membership. The members of said commission shall receive no compensation for their services except their actual and necessary expenses.

**History:** En. Sec. 1, Ch. 184, L. 1929; amd. Sec. 1, Ch. 91, L. 1945; amd. Sec. 1; Ch. 55, L. 1961; amd. Sec. 1, Ch. 215, L. 1965.

man" after "librarian of the state university" in the second sentence; and inserted the fourth sentence.

#### Amendment

The 1965 amendment deleted "as chair-

#### Cross-References

Commission continued in department of education, sec. 82A-509.

**44-129, 44-130. (1575.3, 1575.4) Repealed.**

#### Repeal

These sections (Secs. 3, 4, Ch. 91, L. 1945; Sec. 3, Ch. 55, L. 1961), relating to

powers and duties of the state library commission, were repealed by Sec. 3, Ch. 215, Laws 1965.

**44-131. Powers of state library commission.** The state library commission shall have the power: (1) To give assistance and advice to all tax-supported or public libraries in the state and to all counties, cities, towns or regions in the state which may propose to establish libraries, as to the best means of establishing and improving such libraries;

(2) To maintain and operate the state library and make provision for its housing;

(3) To accept and to expend in accordance with the terms thereof any grant of federal funds which may become available to the state for library purposes;

(4) To make rules and regulations and establish standards for the administration of the state library, and for the control, distribution and lending of books and materials;

(5) To serve as the agency of the state to accept and administer any state, federal or private funds or property appropriated for or granted to it for library service or to foster libraries in the state and to establish regulations under which funds shall be dispersed;

(6) To provide library services for the blind and physically handicapped;

(7) To furnish, by contract or otherwise, library assistance and information services to state officials, state departments and residents of those parts of the state inadequately serviced by libraries;

(8) To act as a state board of professional standards and library examiners and develop standards for public libraries and adopt rules and regulations for the certification of librarians;

(9) To designate areas for the establishment of federations of libraries and to designate the headquarters library for such federations. The librarian of the headquarters library shall serve as the co-ordinator of the federation and as a nonvoting member of the federation advisory board of trustees. It is the policy of the legislature to encourage the most efficient delivery of library services to the people of Montana. To that end the state should be divided into regions within which libraries desiring to participate in the distribution of such state funding to libraries as may be available from time to time shall organize into library federations to pool resources and information and avoid duplication of effort.

History: En. Sec. 2, Ch. 215, L. 1965;  
amd. Sec. 1, Ch. 357, L. 1974.

#### Amendments

The 1974 amendment added "and physically handicapped" at the end of subdivision (6); added subdivision (9); and made a minor change in punctuation.

#### Title of Act

An act amending section 44-127, R. C. M. 1947, defining the powers and duties of the state library commission; and repealing sections 44-129 and 44-130, R. C. M. 1947.

#### Repealing Clause

Section 3 of Ch. 215, Laws 1965 read "Sections 44-129 and 44-130, R. C. M. 1947, are repealed."

#### 44-132. Definitions. As used in this act:

(1) "Print" includes all forms of printing and duplicating, regardless of format or purpose, with the exception of correspondence and interoffice memoranda.

(2) "State publication" includes any document, compilation, journal, law, resolution, bluebook, statute, code, register, pamphlet, list, book, proceedings, report, memorandum, hearing, legislative bill, leaflet, order, regulation, directory, periodical or magazine issued in print, or purchased for distribution, by the state, the legislature, constitutional officers, any state department, committee or other state agency supported wholly or in part by state funds.

(3) "State agency" includes every state office, officer, department, division, bureau, board, commission and agency of the state, and, where applicable, all subdivisions of each.

**History:** En. Sec. 1, Ch. 261, L. 1967.

**Title of Act**

An act to create a state publications library distribution center as a division

of the state library and amending section 82-1916, R. C. M. 1947, relating to printing and distribution of state reports and providing for reimbursement for additional publications.

**44-133. Creation of distribution center—state library commission to make regulations.** There is hereby created as a division of the state library, and under the direction of the state librarian, a state publications library distribution center. The center shall promote the establishment of an orderly depository library system. To this end the state library commission shall make such rules and regulations necessary to carry out the provisions of this act.

**History:** En. Sec. 2, Ch. 261, L. 1967.

**44-134. Depositing of state agency publications—additional copies—inter-library loan—sale publications.** Every state agency shall upon release deposit at least four copies of each of its state publications with the state library for record and depository purposes. Additional copies shall also be deposited, in quantities certified to the agencies by the state library as required to meet the needs of the depository library system and to provide inter-library loan service to those libraries without depository status. Additional copies of sale publications required by the state library shall be furnished only upon reimbursement to the state agency of the full cost of such sale publications, and the state library shall also reimburse any state agency for additional publications so required, where the quantity desired will necessitate additional printing or other expense to such agency.

**History:** En. Sec. 3, Ch. 261, L. 1967.

**Cross-Reference**

Printing and publications of state agencies and offices, sec. 82-1916.

**44-135. Depository contracts — eligibility requirements — standards.** The center shall enter into depository contracts with any municipal or county free library, state college or state university library, the library of congress and the midwest inter-library center, and other state libraries. The requirements for eligibility to contract as a depository library shall be established by the state library commission upon recommendations of the state librarian. The standards shall include and take into consideration the type of library, ability to preserve such publications and to make them available for public use, and also such geographical locations as will make the publications conveniently accessible to residents in all areas of the state.

**History:** En. Sec. 4, Ch. 261, L. 1967.

**44-136. List of available publications.** The center shall publish and distribute regularly to contracting depository libraries and other libraries upon request a list of available state publications.

**History:** En. Sec. 5, Ch. 261, L. 1967.



44-137. State agency lists of current publications. Upon request by the center, issuing state agencies shall furnish the center with a complete list of its current state publications and a copy of its mailing and/or exchange lists.

History: En. Sec. 6, Ch. 261, L. 1967.

44-138. Restriction on general public distribution. The center shall not engage in general public distribution of either state publications or lists of publications.

History: En. Sec. 7, Ch. 261, L. 1967.

44-139. Exempt state agencies and officers. This act shall not apply to nor affect the duties concerning publications distributed by, or officers of:

(1) The state law library;

(2) The secretary of state in connection with his duties under sections 12-317, 82-2202 (17) and 43-711.2, R. C. M. 1947.

History: En. Sec. 8, Ch. 261, L. 1967.

## CHAPTER 2—LIBRARY SYSTEMS

Section 44-212. Library systems defined—establishment.

44-213. Participation of other governmental units.

44-214. Board of trustees—appointment.

44-214.1. Boards of trustees—powers.

44-215. Appropriations for support of library federations.

44-218. Purpose of act in regard to free public libraries.

44-219. Establishing public library—resolution—petition—election.

44-219.1. Joint city-county library—expenses.

44-219.2. Board of trustees to govern city-county library—compensation—expenses.

44-220. Levying of tax—special library fund—payments upon order or warrant.

44-221. Board of trustees—appointment—composition of board—tenure.

44-222. Board of trustees—powers and duties.

44-223. Board of trustees—chief librarian—personnel—compensation.

44-224. Free use of library—exclusions—extending privileges.

44-225. Providing library services—co-operation and merging of boards, institutions and agencies.

44-226. Cities or towns with existing tax-supported libraries—notification—exemption from county taxes.

44-227. "City" defined.

44-228. Continued existence of all public libraries.

44-201 to 44-210. (4563 to 4572) Repealed.

### Repeal

These sections (Secs. 1 to 10, Ch. 45, L. 1915; Secs. 1 to 4, Ch. 137, L. 1917; Sec. 1, Ch. 56, L. 1923; Secs. 1 to 3, Ch. 202,

L. 1943; Sec. 1, Ch. 14, L. 1949), relating to county and regional free libraries were repealed by Sec. 12, Ch. 260, Laws 1967.

44-212. Library systems defined — establishment. Library systems shall include library federations, or library networks as defined hereafter:

(1) Library federations. A library federation is a combination of libraries serving a multi-county, multi-city, or city-county area within a federation area designated by the state library commission. Any other public library or town, city, or county within the federation area may participate in such a federation. Two (2) or more cities, towns, counties,

or a city and one or more counties may agree by contract to form such a federation by action of their respective governing bodies or duly created boards of library trustees, provided that one of the parties is or maintains a library which has been designated by the state library commission as a headquarters library for that federation area. The participating entities may retain such autonomy over their respective libraries as may be specified in the contract. The expense of providing library services for the library federation shall be apportioned between or among the towns, cities and counties involved on such basis as shall be agreed upon in the contract. The treasurer of one of the participating units, as shall be provided in the contract shall have the custody of the funds of the federation, and the participating governments concerned shall transfer semi-annually to him all moneys collected for the "free library fund" in their respective jurisdiction. A participating entity may withdraw from a federation according to the terms for withdrawal provided in the contract by the action of its governing body or by a majority of its qualified voters voting at a general or special election.

(2) Library networks. A library network is an agreement between individual libraries or library systems, which may be inter-city, intra-state, or inter-state, for the exchange of information or to provide specific library services not provided in existing library federations.

History: En. Sec. 1, Ch. 132, L. 1939;      Amendments  
amd. Sec. 2, Ch. 357, L. 1974.

The 1974 amendment completely rewrote this section. For version prior to amendment, see parent volume.

**44-213. Participation of other governmental units.** When a library federation shall have been established, the legislative body of any government unit in the designated library federation area may decide, with the concurrence of the board of trustees of its library, if it is maintaining a library, to participate in the library federation. Each local entity may determine the amount of services it wishes to supply to fulfill the needs of its unit. After the necessary contract has been executed and beginning with the next fiscal year, the said governmental unit shall participate in the library federation and its residents shall be entitled to the benefits of the library federation, and property within its boundaries shall be subject to taxation for library federation purposes.

The state board of regents may contract with the government of any city or county, or the governments of both the city and the county, in which a unit of the university of Montana is located for the establishment and operation of joint library services. Any such contract which proposes the erection of a building shall be subject to the approval of the legislature. Any joint library services established pursuant to this section shall be operated and supported as provided in such contract and under this chapter.

History: En. Sec. 2, Ch. 132, L. 1939;  
amd. Sec. 1, Ch. 249, L. 1963; amd. Sec.  
3, Ch. 357, L. 1974.

#### Amendments

The 1963 amendment added the third, fourth, and fifth sentences.

The 1974 amendment substituted "library federation" throughout the section for "joint county or regional library"; substituted "in the designated library federation area" in the first sentence for "therein that is maintaining a library"; inserted "if it is maintaining a library" in

the first sentence; inserted the second sentence; substituted "After the necessary contract has been executed and" at the beginning of the third sentence for "after which"; deleted "of the county" in the third sentence after "fiscal year"; deleted a sentence at the end of the first paragraph which read "A governmental unit participating in the joint county or regional library may retain title to its own property, continue its own board of library trustees, and may levy its own taxes for library purposes; or, by a majority vote of the qualified electors, a governmental unit may transfer, conditionally or otherwise, the ownership and control of its library, with all or any part of its property, to another governmental unit which is providing or will provide free library service in the territory of the former, and

the trustees or body making the transfer shall thereafter be relieved of responsibility pertaining to the property transferred"; substituted "regents" in the first sentence of the second paragraph for "education"; substituted "services" in two places in the second paragraph for "facilities"; and made minor changes in phraseology.

#### Effective Date

Section 2 of Ch. 249, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 11, 1963.

#### Cross-References

Board of regents to exercise powers and duties of state board of education, sec. 75-5617 (2).

**44-214. Board of trustees—appointment.** In a library federation there shall be a board of trustees with advisory powers only, the operation of the library federation having been specified by contract. The board of trustees of each participating library shall name one of their members to the federation advisory board of trustees and each participating entity without a duly appointed library board shall name a layman to represent that entity on the library federation board of trustees.

**History:** En. Sec. 3, Ch. 132, L. 1939; amd. Sec. 10, Ch. 260, L. 1967; amd. Sec. 4, Ch. 357, L. 1974.

#### Amendments

The 1967 amendment added the last sentence.

The 1974 amendment completely re-wrote this section. Prior to amendment it read "In a joint county or regional library district the board of five trustees shall be appointed by the joint action of all the county commissioners in the district. The first appointments or elections shall be for terms of one (1), two (2),

three (3), four (4), and five (5) years respectively, and thereafter a trustee shall be appointed or elected annually to serve for five (5) years. Vacancies shall be filled for unexpired terms as soon as possible in the manner in which members of the board are regularly chosen. A trustee shall not receive a salary or other compensation for services as trustee, but necessary expenses actually incurred shall be paid from the library fund. A library trustee may be removed only by vote of the legislative body. Trustees shall serve no more than two full terms in succession."

**44-214.1. Boards of trustees—powers.** The board of trustees of a library federation shall act as an adviser to the participating libraries and their boards of trustees. Any disagreement among participants in a library federation regarding the apportionment of funds or grants received from the state library commission shall be resolved by the state library commission. Control over the budgets and administrative policies of participating libraries shall remain in their boards of trustees as provided in section 44-222.

**History:** En. 44-214.1 by Sec. 5, Ch. 357, L. 1974.

#### Title of Act

An act defining and revising the pro-

cedures for establishing library systems; and amending sections 44-131, 44-212, 44-213, 44-214, and 44-215, R. C. M. 1947.

**44-215. Appropriations for support of library federations.** After a library federation shall have been established or library service contracted



for, the legislative body of the governmental unit for which the library was established or the service engaged, shall appropriate money annually for the support of the library or library services and so far as possible, the taxes levied and collected for this purpose shall be levied and collected within the territory to be served.

**History:** En. Sec. 4, Ch. 132, L. 1939; amd. Sec. 6, Ch. 357, L. 1974.

#### Amendments

The 1974 amendment substituted "library federation" in this section for "joint county or regional library"; inserted "or library services" after "support of the library"; and deleted from the end of the section two sentences reading "The board

of trustees shall have the exclusive control of expenditures from the fund subject to any examination of accounts required by the state and money shall be paid from the fund only upon vouchers of the board of trustees, without further audit. The board shall not make expenditures or incur indebtedness in any year in excess of the amount of money appropriated and available for library purposes."

### 44-216, 44-217. Repealed.

#### Repeal

These sections (Secs. 5, 6, Ch. 132, L. 1939), relating to tax levies and librarians

for joint county or regional libraries, were repealed by Sec. 12, Ch. 260, Laws 1967.

**44-218. Purpose of act in regard to free public libraries.** It is the purpose of this act to encourage the establishment, adequate financing, and effective administration of free public libraries in this state to give the people of Montana the fullest opportunity to enrich and inform themselves through reading.

**History:** En. Sec. 1, Ch. 260, L. 1967.

#### Title of Act

An act providing for the creation, maintenance and operation of public libraries in counties and cities and re-

pealing sections 44-201, 44-202, 44-203, 44-204, 44-205, 44-206, 44-207, 44-208, 44-209, 44-210, 44-216, 44-217, 44-301, 44-302, 44-303 and 11-704, R. C. M. 1947; amending section 44-214, R. C. M., 1947.

**44-219. Establishing public library — resolution — petition — election.** A public library may be established in any county or city in any of the following ways:

(1) The governing body of any county or city desiring to establish and maintain a public library may pass and enter upon its minutes a resolution to the effect that a free public library is established under the provision of Montana laws relating to public libraries.

(2) By petition signed by not less than ten per centum (10%) of the resident taxpayers whose names appear upon the last completed assessment roll of the city or county being filed with the governing body requesting the establishment of a public library. The governing body of a city or county shall set a time of meeting at which they may by resolution establish a public library; the governing body shall give notice of the contemplated action in a newspaper of general circulation for two consecutive weeks giving therein the date and place of the meeting at which the contemplated action is proposed to be taken.

(3) Upon a petition being filed with the governing body and signed by not less than five per centum (5%) of the resident taxpayers of any city or county requesting an election the governing body shall submit to a vote of the qualified electors thereof, at the next general election,

the question of whether a free public library shall be established. If such a petition is submitted for a city or town, the petition must be signed by resident taxpayers of said city or town. If such a petition is submitted to the county commissioners of a county asking for the establishment of a county library, the petition must be signed by resident taxpayers of the county who reside outside the corporate limits of an incorporated city or town located in said county which may already have established a free public library for such city or town.

If such petition specifically asks that a special election be called, and such petition is signed by thirty-five per centum (35%) of the resident freeholders affected by such petition, then the governing body shall, upon receipt of such petition, immediately set a date for a special election, which date shall be as soon as the procedures for establishing a special election will allow.

If at such election, a majority of the electors voting on the question vote in favor of the establishment of a library, the governing body shall immediately take the necessary steps to establish and maintain said library, or to contract with any city or county for library service to be rendered to the inhabitants of such city, town or county.

**History:** En. Sec. 2, Ch. 260, L. 1967; **Amendments**  
amd. Sec. 1, Ch. 263, L. 1969.

The 1969 amendment substituted "any" for "either" in the introductory sentence and added subdivision (3).

**44-219.1. Joint city-county library—expenses.** A county and any city or cities within the county, by action of their respective governing bodies, may join in establishing and maintaining a joint city-county library under the terms of a contract agreed upon by all parties. The expenses of a joint city-county library shall be apportioned between or among the county and cities on such a basis as shall be agreed upon in the contract. The governing body of any city or county entering into a contract may levy a special tax as provided in section 44-220 for the establishment and operation of a joint city-county library. The treasurer of the county, or of a participating city within the county, as shall be provided in the contract, shall have custody of the funds of the joint city-county library, and the other treasurers of the county or cities joining in the contract shall transfer quarterly to him all moneys collected for the joint city-county library. The contract shall provide for the disposition of property upon dissolution of the joint city-county library.

**History:** En. Sec. 1, Ch. 273, L. 1973. **Title of Act**

An act to provide for the establishment and operation of a joint city-county library; and providing an effective date.

**44-219.2. Board of trustees to govern city-county library—compensation—expenses.** A joint city-county library shall be governed by a board of trustees composed of five (5) members chosen as specified in the contract, with terms not to exceed five (5) years. Trustees shall serve no more than two (2) full terms in succession. Trustees shall serve with-

out compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds. Trustees shall meet and elect a chairman, and such other officers as they deem necessary, for one (1) year terms. The board of trustees shall have the power and duties as specified in sections 44-213 through 44-225.

**History:** En. Sec. 2, Ch. 273, L. 1973.

**Effective Date** \_\_\_\_\_

Section 3 of Ch. 273, Laws 1973 pro-

vided the act should be in effect from and after its passage and approval. Approved March 10, 1973.

**44-220. Levying of tax—special library fund—payments upon order or warrant.** The governing body of any city or county which has established a public library may levy in the same manner and at the same time as other taxes are levied a special tax not to exceed 3 mills on the dollar upon all property in such county, which may be levied by the governing body of such county, and not to exceed 4½ mills on the dollar upon all property in such city or town, which may be levied by the governing body of such city or town, in the amount necessary to maintain adequate public library service. The proceeds of such tax shall constitute a separate fund called the public library fund and shall not be used for any purpose except those of the public library. No money shall be paid out of the public library fund by the treasurer of the city or county except by order or warrant of the board of library trustees.

Bonds may be issued by the governing body in the manner prescribed by law for the erection and equipment of public library buildings and the purchase of land therefor.

**History:** En. Sec. 3, Ch. 260, L. 1967.

**Allocation of Costs**

City has general budgetary authority in financing construction of city shop

complex and has implied power to allocate costs among various city departments using the facility. Greener v. City of Great Falls, 157 M 376, 485 P 2d 932.

**44-221. Board of trustees — appointment — composition of board — tenure.** Upon the establishment of a public library under the provisions of this act, the mayor, with the advice and consent of the city council or city commissioners, shall appoint a board of trustees for the city library and the chairman of the board of county commissioners, with the advice and consent of said board, shall appoint a board of trustees for the county library. The library board shall consist of five trustees. Not more than one member of the governing body shall be, at any one time, a member of such board. Trustees shall serve without compensation but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds. Trustees shall hold their office for five years from the date of appointment, and until their successors are appointed. Initially appointments shall be made for one, two, three, four and five year terms. Annually thereafter, there shall be appointed before the first day of July of each year in the same manner as the original appointments for a five year term, a trustee to take the place of the retiring trustee. Trustees shall serve no more than two



full terms in succession. Following such appointments in July of each year, the trustees shall meet and elect a chairman and such other officers as they deem necessary, for one year terms. Vacancies in the board of trustees shall be filled for the unexpired term in the same manner as original appointments.

History: En. Sec. 4, Ch. 260, L. 1967.

44-222. Board of trustees—powers and duties. The library board of trustees shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library. The library board of trustees of every public library shall:

(1) Adopt bylaws, rules and regulations for its own transaction of business and for the government of the library, not inconsistent with law.

(2) Establish and locate a central public library and may establish branches thereof at such places as are deemed necessary.

(3) Have the power to contract, including the right to contract with regions, counties, cities, school districts, educational institutions, the state library and other libraries to give and receive library service, through the boards of such regions, counties and cities and the district school boards, and to pay out or receive funds to pay costs of such contracts.

(4) Have the power to acquire by purchase, devise, lease or otherwise, and to own and hold real and personal property, in the name of the city or county or both as the case may be, for the use and purposes of the library, and to sell, exchange or otherwise dispose of property real or personal when no longer required by the library, and to insure the real and personal property of the library.

(5) Pay necessary expenses of members of the library staff when on business of the library.

(6) Prepare an annual budget indicating what support and maintenance of the public library will be required from public funds for submission to the appropriate agency of the governing body. A separate budget request shall be submitted for new construction or for capital improvement of existing library property.

(7) Make an annual report to the governing body of the city or county on the condition and operation of the library, including a financial statement. The trustees shall also provide for the keeping of such records as shall be required by the Montana State Library in its request for an annual report from the public libraries and shall submit such an annual report to the state library.

(8) Have the power to accept gifts, grants and donations from whatever source and to expend the same for the specific purpose of the gift, grant, or donation. These gifts, grants and donations shall be kept separate from regular library funds and are not subject to reversion at the end of the fiscal year.

(9) Exercise such other powers, not inconsistent with law, necessary for the effective use and management of the library.

**History:** En. Sec. 5, Ch. 260, L. 1967.

**Allocation of Costs**

City has general budgetary authority in financing construction of city shop

complex and has implied power to allocate costs among various city departments using the facility. *Greener v. City of Great Falls*, 157 M 376, 485 P 2d 932.

**44-223. Board of trustees—chief librarian—personnel—compensation.**

The board of trustees of each library shall appoint and set the compensation of the chief librarian who shall serve as the secretary of the board and shall serve at the pleasure of the board. With the recommendation of the chief librarian the board shall employ and discharge such other persons as may be necessary in the administration of the affairs of the library, fix and pay their salaries and compensation and prescribe their duties.

**History:** En. Sec. 6, Ch. 260, L. 1967.

**44-224. Free use of library—exclusions—extending privileges.** Every library established under the provisions of this act shall be free to the use of the inhabitants of the city or the county supporting such library. The board may exclude from the use of the library any and all persons who shall willfully violate the rules of the library. The board may extend the privileges and use of the library to persons residing outside of the city or county upon such terms and conditions as it may prescribe by its regulations.

**History:** En. Sec. 7, Ch. 260, L. 1967.

**44-225. Providing library services—co-operation and merging of boards, institutions and agencies.** Library boards of trustees, boards of other educational institutions, library agencies, and local political subdivisions are hereby empowered to co-operate, merge or combine in providing library service.

**History:** En. Sec. 8, Ch. 260, L. 1967.

**44-226. Cities or towns with existing tax-supported libraries—notification—exemption from county taxes.** After the establishment of a county free library as provided in this act, the governing body of any city or town which has an existing tax-supported public library may notify the board of county commissioners that such city or town does not desire to be a part of the county library system. Such notification shall exempt the property in such city or town from liability for taxes for county library purposes.

**History:** En. Sec. 9, Ch. 260, L. 1967.

**44-227. "City" defined.** Wherever the word "city" is used in this act it means city or town.

**History:** En. Sec. 11, Ch. 260, L. 1967.

**44-228. Continued existence of all public libraries.** All public libraries heretofore established shall continue in existence, subject to the changes in administration provided herein.

**History:** En. Sec. 12, Ch. 260, L. 1967.

### CHAPTER 3—CITY FREE PUBLIC LIBRARIES

(Repealed—Section 12, Chapter 260, Laws of 1967)

#### 44-301 to 44-303. (5049 to 5051) Repealed.

##### Repeal

These sections (Sec. 1, p. 110, L. 1883; Secs. 5039 to 5041, Pol. C. 1895; Sec. 1, p. 229, L. 1897; Sec. 1, Ch. 32, L. 1931;

Sec. 1, Ch. 61, L. 1947), relating to the establishment of free public libraries, were repealed by Sec. 12, Ch. 260, Laws 1967.

### CHAPTER 4—STATE LAW LIBRARY

#### Section 44-403. Powers and duties of board.

##### 44-404. Librarian—term of office.

##### 44-410. Accounts—approval.

##### 44-411. Index to session laws.

**44-403. Powers and duties of board.** The powers and duties of said board are as follows:

(1) to (5). \* \* \* [Same as parent volume.]

(6) To report as provided in section 2 [82-4002] of this act.

(7). \* \* \* [Same as parent volume.]

**History:** En. Sec. 3, Ch. 153, L. 1949; amd. Sec. 14, Ch. 93, L. 1969.

##### Amendments

The 1969 amendment substituted "as provided in section 2 of this act" for "to the governor, biennially, a statement of all

important transactions of the board, and of the operations of the library, with suggestions and recommendations as to what the board deems necessary for the increased utility and efficiency of the library" in subdivision (6).

**44-404. Librarian—term of office.** The librarian appointed by the board shall hold office for the term of two (2) years, unless sooner removed by a majority vote of the trustees.

**History:** En. Sec. 4, Ch. 153, L. 1949; amd. Sec. 21, Ch. 177, L. 1965.

thousand dollars (\$1,000.00), to be approved by the chief justice, and deposited with the secretary of state."

##### Amendment

The 1965 amendment deleted a second sentence reading, "The librarian must execute an official bond, in the sum of one

##### Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

#### 44-407. Repealed.

##### Repeal

This section (Sec. 7, Ch. 153, L. 1949),

relating to the state law library fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

**44-410. Accounts—approval.** All accounts for the proofing and printing of books, legal periodicals, library collections, furniture, fixtures and supplies must be prepared by the librarian, submitted to and approved by at least one (1) member of the board of trustees.



**History:** En. Sec. 10, Ch. 153, L. 1949; amd. Sec. 13, Ch. 97, L. 1961; amd. Sec. 85, Ch. 147, L. 1963.

#### Amendment

The 1963 amendment deleted "and thereafter paid out of the state treasury from the library fund" at the end of the section.

**44-411. Index to session laws.** It shall be the duty of the legislative services division of the legislative council to prepare a suitable index of all the laws and resolutions passed or adopted at each session of the legislative assembly of Montana. Such index shall be a thorough index of such laws and resolutions, and of each subject contained in or covered by such laws and resolutions, together with such cross-index as will assist in readily finding any subject or matter contained in such volume; and for the purpose of procuring and preserving uniformity in such indexes, the index of each succeeding volume of the session laws shall conform, as near as practicable, with those of the volumes preceding it. There shall also be prepared for each volume of such laws an additional index, showing what sections of the several codes of this state, and what session laws have been amended, repealed, altered, or changed by any laws published in that volume, which shall be known and designated as the "code index."

**History:** En. Sec. 11, Ch. 153, L. 1949; amd. Sec. 1, Ch. 128, L. 1973.

#### Amendments

The 1973 amendment substituted "legislative services division of the legislative council" for "state law librarian" in the first sentence; deleted "prepared by said librarian" from the end of the second

sentence; deleted the clause following "code index," at the end of the section; and made minor changes in phraseology.

#### Repealing Clause

Section 2 of Ch. 128, Laws 1973 read "Section 44-412, R. C. M. 1947, is repealed."

### 44-412. Repealed.

#### Repeal

Section 44-412 (Sec. 12, Ch. 153, L. 1949; Sec. 86, Ch. 147, L. 1963), relating to stenographic assistance to prepare the

index to the session laws, was repealed by Sec. 2, Ch. 128, Laws 1973. For new law, see sec. 44-411.

## CHAPTER 5—HISTORICAL SOCIETY—LIBRARY AND MUSEUM

- Section 44-516. Historical society continued and perpetuated—purposes.  
 44-517. Definition of terms.  
 44-518. Library and museum independent of other state institutions.  
 44-519. Board of trustees—appointment and terms of members.  
 44-520. Qualifications of trustees.  
 44-521. Executive committee of trustees.  
 44-522. Reimbursement of trustees.  
 44-523. Powers and duties of trustees.  
 44-524. Director's responsibility—assistants and employees.  
 44-525. Official seal of society.  
 44-526. Furnishings and fittings in veterans' and pioneers' building.  
 44-527. Fund raising drives—revenues and receipts.  
 44-528. Fine arts' commission abolished.  
 44-529. Admission fees for antique automobile collection—disposition of proceeds.

### 44-501 to 44-515. Repealed.

#### Repeal

These sections (Secs. 1 to 15, Ch. 134,

L. 1949; Secs. 14, 19, Ch. 97, L. 1961), relating to the historical society and the

historical library and museum, were repealed by Sec. 14, Ch. 47, Laws 1963. Sections 46 to 48, Ch. 147, Laws 1963, purported to amend sections 44-509, 44-

510, and 44-514, respectively; however, under the rule of section 43-515, such amendments were void and did not revive the amended sections.

**44-516. Historical society continued and perpetuated—purposes.** The historical society of Montana, originally organized under the provisions of an act of the legislative assembly of the territory of Montana, entitled “an act to incorporate the historical society of Montana,” approved February 2, 1865, and thereafter made to become the historical society of the state of Montana by an act approved March 4, 1891, entitled “an act concerning the historical society for the state of Montana and making an appropriation therefor,” and by “an act to perpetuate the historical society of the state of Montana,” approved March 1, 1949, is hereby continued and perpetuated as the “Montana Historical Society” and as such constitutes an agency of state government for the use, learning, culture and enjoyment of the citizens of the state and for the acquisition, preservation and protection of historical records, art archival and museum objects, historical places, sites and monuments and the custody, maintenance and operation of the historical library, museums, art galleries, and historical places, sites and monuments.

**History:** En. Sec. 1, Ch. 47, L. 1963.

**Title of Act**

An act continuing and perpetuating the Montana historical society and prescribing the powers and duties of the board of trustees of the society; abolishing the Montana fine arts' commission; and repealing

sections 44-501, 44-502, 44-503, 44-504, 44-505, 44-506, 44-507, 44-508, 44-509, 44-510, 44-511, 44-512, 44-513, 44-514, 44-515, 19-119, 19-120 and 19-121, R. C. M. 1947.

**Cross-References**

Society transferred to department of education, sec. 82A-503.

**44-517. Definition of terms.** As used in this act, (1) “Society” means the Montana historical society and includes

- (a) The historical and miscellaneous libraries and their contents;
- (b) Any museums and art galleries, and their contents, acquired by the trustees;
- (c) Any historical places, sites or monuments acquired or developed by the society;
- (d) Any divisions, departments and activities operated in conjunction with the historical library as are established by the trustees; and
- (e) Any books, papers, maps, charts, manuscripts, photographs, writings, records, objects of history and art, paintings, engravings, relics, collections of artifacts and minerals, furniture or fixtures acquired by the trustees.

(2) “Trustees” means the board of trustees of the Montana historical society.

(3) “Committee” means the executive committee of the board of trustees of the Montana historical society.

**History:** En. Sec. 2, Ch. 47, L. 1963.

**44-518. Library and museum independent of other state institutions.** Any historical library or museum administered by the society in accord-

ance with the provisions of this act shall be independent of any other library, museum, or gallery owned, maintained or operated by the state of Montana.

**History:** En. Sec. 3, Ch. 47, L. 1963.

**44-519. Board of trustees—appointment and terms of members.** The government and administration of the society is vested in a board of fifteen (15) trustees, appointed by the governor, by and with the consent of the senate. Three (3) each of the original members of the board shall be appointed for one (1), two (2), three (3), four (4) and five (5) year terms. An appointment to replace a member whose term has expired shall be for five (5) years. An appointment to replace a member whose term has not expired shall be for the unexpired term.

**History:** En. Sec. 4, Ch. 47, L. 1963.

#### Cross-References

Appointment and terms of members of board after reorganization, sec. 82A-507 (2).

#### Removal of Director of State Historical Society

Under this section and sections 44-523

and 59-405 the power to remove the director of the state historical society lies in the board of trustees of the state historical society and it may do so without notice or opportunity to be heard. State ex rel. MacGilvra v. District Court of the First Judicial District, 148 M 182, 418 P 2d 874, 876.

**44-520. Qualifications of trustees.** Trustees shall be appointed because of their special interest in the accomplishment of the purposes of the society, their fitness for discharging these duties, and their willingness to devote time and effort in the public interest and to serve without compensation. The governor shall in so far as possible, appoint trustees from the various geographical areas of the state.

**History:** En. Sec. 5, Ch. 47, L. 1963.

**44-521. Executive committee of trustees.** The trustees may select an executive committee of five (5) trustees and delegate to the committee such functions in aid of the efficient administration of the affairs of the society as the trustees deem advisable.

**History:** En. Sec. 6, Ch. 47, L. 1963.

**44-522. Reimbursement of trustees.** The trustees shall serve without compensation, but may be reimbursed for mileage.

**History:** En. Sec. 7, Ch. 47, L. 1963.

#### Cross-References

Compensation and reimbursement of trustees, secs. 82A-110(5), 82A-507(2).

**44-523. Powers and duties of trustees.** The powers and duties of the trustees are as follows:

(1) To elect annually from among their number a president, a vice-president, and a secretary.

(2) To adopt bylaws for their own government, and to make rules and regulations, not inconsistent with law, for the proper administration of the society in the interests of preserving the rich heritage of this state and its people.



(3) To appoint a director, fix his salary, and prescribe his duties and responsibilities.

(4) To create such classes of memberships in the society as they deem desirable, to determine the qualifications for any class of membership, and to set the fees to be paid for such memberships.

(5) To sell or exchange publications and surplus copies of books or other museum or art objects and use the money arising from such sales for the operation of the society and for the acquisition of historical materials and objects of art.

(6) To see that the collections and properties of the society are maintained in good order and repair.

(7) To report to the governor and the legislature biennially. The report shall include a statement of all important transactions and acquisitions, with suggestions and recommendations for the better realization of the purposes of the society and the improvement of its collections and services.

(8) To accept, receive and administer in the name of the society, any gifts, donations, properties, securities, bequests and legacies that may be made to the society. Moneys received by donation, gift, bequest or legacy, unless otherwise provided by the donor, shall be deposited in the state treasury and used for the general operation of the society.

(9) To collect, assemble, preserve and display where appropriate, all obtainable books, pamphlets, maps, charts, manuscripts, journals, diaries, papers, business records, paintings, drawings, engravings, photographs, statuary, models, relics, and all other materials illustrative of the history of Montana in particular, and generally of the Pacific Northwest, Northern Rocky Mountain and Northern Great Plains regions, and of the United States of America when pertinent; to procure from pioneers, early settlers and others, narratives of the events relative to the early settlement of Montana, the Indian occupancy, Indian and other wars, overland travel and immigration to the territories of the west and all other related documents of Montana's history, development and society; to gather contemporary information, specimens, and all other materials which exhibit faithfully the distinctive historical and contemporary characteristics of the area with particular attention to Indian, military and pioneer artifacts and implements; to collect and preserve such natural history objects as fossils, plants, minerals and animals; to collect and preserve books, maps, manuscripts and other materials as will tend to facilitate historical, scientific, and antiquarian research; to promote the study of Montana history by lectures and publications; to generally foster and encourage the fine arts and cultural activities in Montana; to receive for and on behalf of the state by donation or otherwise, art objects of any kind and description and to exhibit and circulate such objects in Montana and elsewhere; and to microfilm papers or documents in danger of disappearance or injury.

**History:** En. Sec. 8, Ch. 47, L. 1963.

Director's position and functions continued, sec. 82A-504.

**Cross-References**

Board to act in advisory capacity, sec. 82A-507(3).

Trustees' functions transferred to director, sec. 82A-505.

**Removal of Director of State Historical Society**

Under this section and sections 44-519 and 59-405 the power to remove the director of the state historical society lies in the board of trustees of the state his-

torical society and it may do so without notice or opportunity to be heard. State ex rel. MacGilvra v. District Court of the First Judicial District, 148 M 182, 418 P 2d 874, 876.

**44-524. Director's responsibility—assistants and employees.** The director is fully responsible for the immediate direction, management and control of the society, subject to the general programs and policies established by the trustees. The director may appoint and employ all assistants and employees required for the management of the historical society, subject to approval by the trustees.

**History:** En. Sec. 9, Ch. 47, L. 1963.

**References**

State ex rel. MacGilvra v. District Court of the First Judicial District, 148 M 182, 418 P 2d 874, 876.

**44-525. Official seal of society.** The design of the official seal of the society shall be substantially as follows: A central group representing a covered immigrant wagon drawn by two yoke of oxen, showing prairie in the foreground, mountains in the background and directly beneath it the figures "1865." The seal shall be two inches in diameter and surrounded by the words, "Montana Historical Society Seal."

**History:** En. Sec. 10, Ch. 47, L. 1963.

**44-526. Furnishings and fittings in veterans' and pioneers' building.** The offices, library, museums and galleries, and quarters for the activities of the society in the veterans' and pioneers' memorial building shall be decorated, fitted, furnished and maintained in dignity and in harmony with the purposes of the society. All furniture and fittings for storage and the use of the library shall be, in design and function, adapted to the efficient and dignified operation and administration of the activities of the society.

**History:** En. Sec. 11, Ch. 47, L. 1963.

**44-527. Fund raising drives—revenues and receipts.** The society may engage in such fund raising drives and public contribution campaigns as will contribute to its continued development and support. It may produce, reproduce, sell, or exchange art objects, film, books, photographs, magazines, pamphlets, and museum objects which are appropriate and will bring credit to the society and to Montana. It may also receive fees, commissions and royalties on the display and sale of arts and crafts. All profits, revenues, royalties or fees received in any such manner shall be deposited in the state treasury and may not be used for any purposes other than the improvement, development and operation of the society.

**History:** En. Sec. 12, Ch. 47, L. 1963.

**44-528. Fine arts' commission abolished.** The Montana fine arts' commission is abolished. All records, property and moneys of the Montana fine arts' commission are transferred to the society.

**History:** En. Sec. 13, Ch. 47, L. 1963.

**Repealing Clause**

Section 14 of Ch. 47, Laws 1963 read  
"Sections 44-501, 44-502, 44-503, 44-504,

44-505, 44-506, 44-507, 44-508, 44-509, 44-510, 44-511, 44-512, 44-513, 44-514, 44-515, 19-119, 19-120 and 19-121, R. C. M. 1947, are repealed."

**44-529. Admission fees for antique automobile collection—disposition of proceeds.** An admission fee shall be set by the board of trustees of the Montana historical society and paid by patrons of the antique Ford automobile collection. Admission fee proceeds up to the amount of twelve thousand five hundred dollars (\$12,500) per fiscal year shall be deposited in the general fund. Proceeds over such amount each fiscal year shall be deposited in the Montana historical society account in the earmarked revenue fund.

**History:** En. Sec. 2, Ch. 324, L. 1967.

**Title of Act**

An act to appropriate money from the general fund to the Montana historical society to lease, operate and maintain a building to house the antique Ford auto-

mobile collection for the biennium ending June 30, 1969.

**Appropriation**

Section 1 of Chapter 324, Laws 1967, appropriated funds for housing the antique automobile collection during the biennium ending June 30, 1969.

## CHAPTER 6—INTERSTATE LIBRARY COMPACT

Section 44-601. Text of library compact.

44-602. Executive officer of state library commission as administrator.

**44-601. Text of library compact.** The Interstate Library Compact is hereby approved, enacted into law, and entered into by the state of Montana, which compact is in full as follows:

## INTERSTATE LIBRARY COMPACT

### Article I. Policy and Purpose

Because the desire for the services provided by libraries transcends governmental boundaries and can most effectively be satisfied by giving such services to communities and people regardless of jurisdictional lines, it is the policy of the state's party to this compact to co-operate and share their responsibilities; to authorize co-operation and sharing with respect to those types of library facilities and services which can be more economically or efficiently developed and maintained on a co-operative basis; and to authorize co-operation and sharing among localities, states and others in providing joint or co-operative library services in areas where the distribution of population or of existing and potential library resources make the provision of library service on an interstate basis the most effective way of providing adequate and efficient service.

### Article II. Definitions

As used in this compact:

(a) "Public library agency" means any unit or agency of local or state government operating or having power to operate a library.



(b) "Private library agency" means any nongovernmental entity which operates or assumes a legal obligation to operate a library.

(c) "Library agreement" means a contract establishing an interstate library district pursuant to this compact or providing for the joint or co-operative furnishing of library services.

### Article III. Interstate Library Districts

(a) Any one or more public library agencies in a party state in co-operation with any public library agency or agencies in one or more other party states may establish and maintain an interstate library district. Subject to the provisions of this compact and any other laws of the party states which pursuant hereto remain applicable, such district may establish, maintain and operate some or all of the library facilities and services for the area concerned in accordance with the terms of a library agreement therefor. Any private library agency or agencies within an interstate library district may co-operate therewith, assume duties, responsibilities and obligations thereto, and receive benefits therefrom as provided in any library agreement to which such agency or agencies become party.

(b) Within an interstate library district, and as provided by a library agreement, the performance of library functions may be undertaken on a joint or co-operative basis or may be undertaken by means of one or more arrangements between or among public or private library agencies for the extension of library privileges to the use of facilities or services operated or rendered by one or more of the individual library agencies.

(c) If a library agreement provides for joint establishment, maintenance or operation of library facilities or services by an interstate library district, such district shall have power to do any one or more of the following in accordance with such library agreement:

1. Undertake, administer and participate in programs or arrangements for securing, lending or servicing books and other publications, any other materials suitable to be kept or made available by libraries, library equipment or for the dissemination of information about libraries, the value and significance of particular items therein, and the use thereof.

2. Accept for any of its purposes under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, (conditional or otherwise), from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm or corporation, and receive, utilize and dispose of the same.

3. Operate mobile library units or equipment for the purpose of rendering bookmobile service within the district.

4. Employ professional, technical, clerical and other personnel, and fix terms of employment, compensation and other appropriate benefits; and where desirable, provide for the in-service training of such personnel.

5. Sue and be sued in any court of competent jurisdiction.

6. Acquire, hold, and dispose of any real or personal property or

any interest or interests therein as may be appropriate to the rendering of library service.

7. Construct, maintain and operate a library, including any appropriate branches thereof.

8. Do such other things as may be incidental to or appropriate for the carrying out of any of the foregoing powers.

#### Article IV. Interstate Library Districts, Governing Board

(a) An interstate library district which establishes, maintains or operates any facilities or services in its own right shall have a governing board which shall direct the affairs of the district and act for it in all matters relating to its business. Each participating public library agency in the district shall be represented on the governing board which shall be organized and conduct its business in accordance with provision therefor in the library agreement. But in no event shall a governing board meet less often than twice a year.

(b) Any private library agency or agencies party to a library agreement establishing an interstate library district may be represented on or advise with the governing board of the district in such manner as the library agreement may provide.

#### Article V. State Library Agency Co-operation

Any two or more state library agencies of two or more of the party states may undertake and conduct joint or co-operative library programs, render joint or co-operative library services, and enter into and perform arrangements for the co-operative or joint acquisition, use, housing and disposition of items or collections of materials which, by reason of expense, rarity, specialized nature, or infrequency of demand therefor would be appropriate for central collection and shared use. Any such programs, services or arrangements may include provision for the exercise on a co-operative or joint basis of any power exercisable by an interstate library district and an agreement embodying any such program, service or arrangement shall contain provisions covering the subjects detailed in Article VI of this compact for interstate library agreements.

#### Article VI. Library Agreements

(a) In order to provide for any joint or co-operative undertaking pursuant to this compact, public and private library agencies may enter into library agreements. Any agreement executed pursuant to the provisions of this compact shall, as among the parties to the agreement:

1. Detail the specific nature of the services, programs, facilities, arrangements or properties to which it is applicable.

2. Provide for the allocation of costs and other financial responsibilities.

3. Specify the respective rights, duties, obligations and liabilities of the parties.

4. Set forth the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of the agreement.

(b) No public or private library agency shall undertake to exercise itself, or jointly with any other library agency, by means of a library agreement any power prohibited to such agency by the constitution or statutes of its state.

(c) No library agreement shall become effective until filed with the compact administrator of each state involved, and approved in accordance with Article VII of this compact.

#### Article VII. Approval of Library Agreements

(a) Every library agreement made pursuant to this compact shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general of each state in which a public library agency party thereto is situated, who shall determine whether the agreement is in proper form and compatible with the laws of his state. The attorneys general shall approve any agreement submitted to them unless they shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public library agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within ninety days of its submission shall constitute approval thereof.

(b) In the event that a library agreement made pursuant to this compact shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorneys general pursuant to paragraph (a) of this article. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorneys general.

#### Article VIII. Other Laws Applicable

Nothing in this compact or in any library agreement shall be construed to supersede, alter or otherwise impair any obligation imposed on any library by otherwise applicable law, nor to authorize the transfer or disposition of any property held in trust by a library agency in a manner contrary to the terms of such trust.



### Article IX. Appropriations and Aid

(a) Any public library agency party to a library agreement may appropriate funds to the interstate library district established thereby in the same manner and to the same extent as to a library wholly maintained by it and, subject to the laws of the state in which such public library agency is situated, may pledge its credit in support of an interstate library district established by the agreement.

(b) Subject to the provisions of the library agreement pursuant to which it functions and the laws of the states in which such district is situated, an interstate library district may claim and receive any state and federal aid which may be available to library agencies.

### Article X. Compact Administrator

Each state shall designate a compact administrator with whom copies of all library agreements to which his state or any public library agency thereof is party shall be filed. The administrator shall have such other powers as may be conferred upon him by the laws of his state and may consult and co-operate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact. If the laws of a party state so provide, such state may designate one or more deputy compact administrators in addition to its compact administrator.

### Article XI. Entry into Force and Withdrawal

(a) This compact shall enter into force and effect immediately upon its enactment into law by any two states. Thereafter, it shall enter into force and effect as to any other state upon the enactment thereof by such state.

(b) This compact shall continue in force with respect to a party state and remain binding upon such state until six months after such state has given notice to each other party state of the repeal thereof. Such withdrawal shall not be construed to relieve any party to a library agreement entered into pursuant to this compact from any obligation of that agreement prior to the end of its duration as provided therein.

### Article XII. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact

shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

**History:** En. Sec. 1, Ch. 119, L. 1967. law the Interstate Library Compact and designating the executive officer of the state library commission as compact administrator for said compact.

**Title of Act**

An act approving and enacting into

**44-602. Executive officer of state library commission as administrator.**  
The executive officer of the state library commission shall be the compact administrator of the Interstate Library Compact.

**History:** En. Sec. 2, Ch. 119, L. 1967.





## TITLE 45—LIENS

- Chapter 1. Liens in general, definitions, creation and effect, 45-109, 45-112, 45-116.
3. Redemption from liens—extinction, 45-301, 45-308.
  4. Loggers' liens, 45-401.
  5. Mechanics' liens, 45-501 to 45-502.1, 45-513 to 45-515.
  7. Crop liens for seed, grain and hail insurance, 45-704, 45-707.
  8. Threshermen's liens, 45-801, 45-802, 45-809.
  9. Farm laborers' liens, 45-911.
  10. Laborers' and materialmen's liens on oil and gas wells and pipelines, 45-1003, 45-1004.1 to 45-1004.3.
  11. Miscellaneous liens, 45-1106, 45-1107.
  13. Stoppage in transit, Repealed—Section 10-102, Chapter 264, Laws of 1963.
  14. Crop or grain lien for dusting or spraying, 45-1410.
  15. Federal tax lien, 45-1501 to 45-1507.

### CHAPTER 1—LIENS IN GENERAL, DEFINITIONS, CREATION AND EFFECT

- Section 45-109. Lien on future interest.  
45-112. Certain contracts void.  
45-116. Holder of lien not entitled to compensation.

#### 45-106. (8224) Repealed.

**Repeal** *Repealed by Sec. 10-102, Ch. 264, Laws of 1963, effective January 1, 1965.*

This section (Sec. 3735, Civ. C. 1895), relating to mortgages and pledges, was

repealed by Sec. 10-102, Ch. 264, Laws of 1963, effective January 1, 1965.

**45-109. (8227) Lien on future interest.** An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. Except as otherwise provided by the Uniform Commercial Code, in such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest. [Effective January 1, 1965.]

**History:** En. Sec. 3742, Civ. C. 1895; re-en. Sec. 5712, Rev. C. 1907; re-en. Sec. 8227, R. C. M. 1921; amd. Sec. 11-118, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2883. Field Civ. C. Sec. 1589.

#### **Amendment**

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the second sentence.

**45-112. (8230) Certain contracts void.** Except as otherwise provided by the Uniform Commercial Code: all contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void. [Effective January 1, 1965.]

**History:** En. Sec. 3751, Civ. C. 1895; re-en. Sec. 5715, Rev. C. 1907; re-en. Sec. 8230, R. C. M. 1921; amd. Sec. 11-119, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2889. Based on Field Civ. C. Sec. 1592.

#### **Amendment**

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

**45-116. (8234) Holder of lien not entitled to compensation.** Except as otherwise provided by the Uniform Commercial Code: One who holds property by virtue of a lien thereon is not entitled to compensation from

the owner thereof for any trouble or expense which he incurs respecting it, except to the same extent as a borrower, under sections 47-109 and 47-110. [Effective January 1, 1965.]

**History:** En. Sec. 3755, Civ. C. 1895; re-en. Sec. 5719, Rev. C. 1907; re-en. Sec. 8234, R. C. M. 1921; amd. Sec. 11-120, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2892. Field Civ. C. Sec. 1596.

#### **Amendment**

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

### **CHAPTER 2—PRIORITY OF LIENS**

#### **45-203. (8237) Order of resort to different funds.**

##### **Settlement of Personal Injury Claim**

Where injured party received payment in settlement of his personal injury claim in the form of three different drafts, the settlement was nevertheless one fund against which hospital lien could be asserted according to its priority rather than three different funds to which mar-

shaling principles would be applied in discharging attorney's lien, even though one of the drafts was in the amount of the hospital bill and included the hospital as payee. *Sisters of Charity of Providence of Montana v. Nichols*, 157 M 106, 483 P 2d 279.

### **CHAPTER 3—REDEMPTION FROM LIENS—EXTINCTION**

**Section 45-301. Right to redeem.**

**45-308. When restoration extinguishes lien.**

**45-301. (8238) Right to redeem.** Except as otherwise provided by the Uniform Commercial Code, every person, having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed. [Effective January 1, 1965.]

**History:** En. Sec. 3780, Civ. C. 1895; re-en. Sec. 5723, Rev. C. 1907; re-en. Sec. 8238, R. C. M. 1921; amd. Sec. 11-121, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2903.

#### **Amendment**

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

**45-308. (8245) When restoration extinguishes lien.** Except as otherwise provided by the Uniform Commercial Code: the voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring a title to the property, or a lien thereon, in good faith, and for a good consideration. [Effective January 1, 1965.]

**History:** En. Sec. 3794, Civ. C. 1895; re-en. Sec. 5730, Rev. C. 1907; re-en. Sec. 8245, R. C. M. 1921; amd. Sec. 11-122, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2913. Based on Field Civ. C. Sec. 1607.

#### **Amendment**

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

### **CHAPTER 4—LOGGERS' LIENS**

**Section 45-401. Who entitled to lien.**

**45-401. Who entitled to lien.** Every person, general partnership, limited partnership, corporation or association performing labor upon,

or who shall assist in obtaining or securing sawlogs, piling, railroad ties, cordwood, or other timber, has a lien upon the same and upon all other sawlogs, piling, railroad ties, cordwood, or other timber which, at the time of the filing of the claim or lien hereinafter provided, belonged to the person or corporation for whom the labor was performed, for the work or labor done upon or in obtaining or securing the particular sawlogs, piling, railroad ties, cordwood, or other timber in said claim or lien described, whether such work or labor was done at the instance of the owner of the same or his agent, or a contractor or subcontractor, or any person in behalf of such owner or his agent, or a contractor or subcontractor. The cook in a logging-camp shall be regarded as a person who assists in obtaining or securing any of the timber herein mentioned.

**History:** En. Sec. 1, p. 126, L. 1899; re-en. Sec. 5819, Rev. C. 1907; amd. Sec. 1, Ch. 60, L. 1909; re-en. Sec. 8318, R. C. M. 1921; amd. Sec. 1, Ch. 59, L. 1967. Cal. Civ. C. Sec. 3065.

#### Amendments

The 1967 amendment inserted "general partnership, limited partnership, corpora-

tion or association" after "Every person" at the beginning of the section.

#### Persons Entitled to Lien

A logging corporation acting in the capacity of an independent contractor was not a "person" as set forth in this chapter and was not entitled to a lien thereunder. *Jack Long Logging Co. v. Pyramid Mountain Lumber, Inc.*, 143 M 87, 387 P 2d 712.

### 45-407. (8324) Recording claim of lien.

#### Advances in Excess of Promised Compensation

Loggers who had originally agreed to compensation of \$5.00 per thousand board feet and who, upon finding that scaling process was not proceeding at a rapid enough rate to determine their payment

on a timely basis, agreed to an advance of fifty cents per tree cut, were not entitled to logger's lien on remaining timber cut but not scaled where they had received advances in excess of the original rate of compensation on all the timber cut. *Alexander v. Hardy*, — M —, 505 P 2d 1201.

## CHAPTER 5—MECHANICS' LIENS

Section 45-501. Who entitled to lien.

45-502. How lien perfected.

45-502.1. Notice of completion.

45-513. Substitution of bond allowed—filing—amount—condition.

45-514. Lien discharged upon filing of bond.

45-515. Action upon bond—period of limitation same.

**45-501. (8339) Who entitled to lien.** Every mechanic, miner, machinist, architect, foreman, engineer, builder, lumberman, artisan, workman, laborer, and any other person, performing any work and labor upon, or furnishing any material, machinery, or fixture for, any building, structure, bridge, flume, canal, ditch, aqueduct, mining claim, coal mine, quartz lode, tunnel, city or town lot, farm, ranch, fence, railroad, telegraph, telephone, electric light, gas, or waterworks or plant, or any improvements, upon complying with the provisions of this chapter, for his work or labor done, or material, machinery or fixtures furnished, has a lien upon the property upon which the work or labor is done or material is furnished.

**History:** En. Sec. 1, p. 332, Bannack Stat.; amd. Sec. 1, p. 509, Cod. Stat. 1871; re-en. Sec. 820, 5th Div. Rev. Stat. 1879; amd. Sec. 1370, 5th Div. Comp. Stat. 1887; amd. Sec. 2130, C. Civ. Proc. 1895; re-en.

Sec. 7290, Rev. C. 1907; re-en. Sec. 8339, R. C. M. 1921; amd. Sec. 1, Ch. 23, L. 1925; amd. Sec. 1, Ch. 408, L. 1971. Cal. C. Civ. Proc. Sec. 1183.



### Compiler's Note

The decision in *Caird Engineering Works v. Seven-up Gold Mining Co., Inc.*, 111 M 471, annotated under this section in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

### Amendments

The 1971 amendment inserted a comma after "machinery" the first place that word appears.

### Abandoned Improvements — Delay in Completion

Where contract specifically said that contractor's ability to continue work would be dependent upon prompt payment by owner as agreed and owner did not pay as agreed, contractor was allowed foreclosure of lien even though he was unable to complete the work. *Gramm v. Insurance Unlimited*, 141 M 456, 378 P 2d 662.

### Claim Arising upon Contract

A mechanic's lien under this section and sections 45-502 to 45-512 is not a claim arising upon a contract under section 91-2704 and the lien is not lost because creditor's claim is not filed. *Hammer v. Chapin*, 256 F Supp 818, 820.

### Materialmen

There could be no valid materialman's lien against owner where general contractor, subcontractor and materialman told owner that he was not dealing with materialman and that materialman was wholesaler and dealt only with contractors. *Glacier State Electric Supply Co. v. Hoyt*, 152 M 415, 451 P 2d 90.

### Property Covered by Lien

Where defendant owned seven unpatented mining claims and leased such

claims under agreement requiring lessee to do shaft and engineering work, and such work was subsequently done by plaintiff with knowledge of lessor, mechanic's lien held by plaintiff attached to all mining claims held by defendant, notwithstanding that plaintiff performed work on only one such claim in group of seven claims. *Fausett v. Blanchard*, 154 M 301, 463 P 2d 319.

### Requirement of Contract

Subcontractor who verbally agreed with contractor to install electrical circuitry in residence was not entitled to lien against the homeowner where the contract between the homeowner and the general contractor specifically provided that the contractor was not entitled to subcontract work without the homeowner's written permission and the homeowner had not expressly or impliedly assented to the subcontractor's performance of the work; in order for a valid lien to be created under this section there must be a contract, express or implied, between the owner of the property and the subcontractor. *Intermountain Electric, Inc. v. Berndt*, — M —, 518 P 2d 1168.

### Substantial Performance

Electrical subcontractor was not entitled to lien under this section where, after completing forty per cent of the agreed work and upon learning of the contractor's insolvency, he voluntarily abandoned the work without requesting a promise for payment from the homeowner. *Intermountain Electric, Inc. v. Berndt*, — M —, 518 P 2d 1168.

### References

*Frank J. Trunk & Son v. DeHaan*, 143 M 442, 391 P 2d 353 (concurring opinion).

**45-502. (8340) How lien perfected.** (1) Every person wishing to avail himself of the benefits of this chapter must file with the county clerk of the county in which the property or premises mentioned in the preceding section is situated, and within ninety days after the material or machinery aforesaid has been furnished, or the work or labor performed, a just and true account of the amount due him, after allowing all credits, and containing a correct description of the property to be charged with such lien, verified by affidavit, but any error or mistake in the account or description does not affect the validity of the lien, if the property can be identified by the description; which paper containing the account, description, and affidavit is deemed the lien, and when there is an open account between the parties for labor, material, or machinery, such lien may be filed within ninety days after the date of the last item in such account, and include all items and charges contained therein, for material or machinery furnished for, or work performed on, the property on which the lien is claimed.

(2) The time within which to perfect the lien by filing of the notice of lien is shortened if the provisions of section 3 [45-502.1] of this act are complied with and a notice of completion is timely filed, in which event such notice of lien must be filed within sixty (60) days immediately following the first publication of the notice of completion.

(3) The following acts of events constitute "completion of any work or improvement" for the purpose of filing a notice of completion:

(a) The written acceptance by the owner, his agent or his representative of the building, improvement or structure. The filing of a notice of completion shall not be considered as an acceptance of the building, improvement, or other structure.

(b) The cessation from labor for thirty (30) days upon any building, improvement or structure, or the alteration, addition to or repair thereof.

**History:** Ap. p. Sec. 6, p. 333, Bannack Stat.; amd. Sec. 6, p. 510, Cod. Stat. 1871; amd. Sec. 1, p. 84, L. 1874; re-en. Sec. 825, 5th Div. Rev. Stat. 1879; amd. Sec. 1371, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 71, Ex. L. 1887; amd. Sec. 2131, C. Civ. Proc. 1895; en. Sec. 1, p. 162, L. 1901; re-en. Sec. 7291, Rev. C. 1907; re-en. Sec. 8340, R. C. M. 1921; amd. Sec. 2, Ch. 408, L. 1971. Cal. C. Civ. Proc. Sec. 1187.

#### Compiler's Note

The decision in *Caird Engineering Works v. Seven-up Gold Mining Co., Inc.*, 111 M 471, annotated under this section in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

#### Amendments

The 1971 amendment designated the former section as subsection (1); and added subsections (2) and (3).

#### Effect of Failure to File Lien within Ninety Days after Material Is Furnished—Subsequent Contract

Where no privity of contract existed between subcontractor and the owners of the improved building and subcontractor did not comply with the ninety-day limitation for filing lien, such subcontractor lost all right to sue owner who had paid prime contractor for work done, and subcontractor was also barred from adding on time period of a subsequent contract with owners for purposes of filing its mechanic's lien. *Frank J. Trunk & Son v. DeHaan*, 143 M 442, 391 P 2d 353.

#### Effect of Overstatement of Amount

Where there were indications that contractor had "padded the bill" for nearly \$4000 but no proof that he had done so with intent to defraud, he did not lose his

right to a mechanic's lien but the trial court should require an accounting. *Hammond v. Knievel*, 141 M 433, 378 P 2d 388.

#### Father and Son

Fact that father and son worked together on one of two projects and that they often worked together did not justify "tacking" the two projects together for purpose of determining timeliness of mechanic's lien filed by person furnishing them concrete where there were two distinct contracts and two distinct accounts; fact that lien was not timely as to one project did not render entire lien void, and it remained valid as to second project. *Tindall v. Negaard*, — M —, 507 P 2d 845.

#### Last Item in Open Account

Entries made in open account crediting owner for materials returned did not operate to keep ninety-day period allowed under this section for filing mechanic's lien from lapsing, since entry of credit for payment or for goods returned does not fall within ambit of "last item in such account"; legislature by that language meant last item furnished, not last entry in open account. *American Homes, Inc. v. Broadmoor Corp.*, 153 M 184, 455 P 2d 334.

#### Question of Continuous Open Account One of Fact

The question of whether a continuous open account existed some fifteen months after completion of the contracted construction work was one of fact and the finding by the trial court would not be disturbed on appeal when supported by evidence. *Hammond v. Knievel*, 141 M 433, 378 P 2d 388.

**45-502.1. Notice of completion.** (1) The owner may file a notice of completion at any time after the completion of any work or improvement.



(2) The notice of completion together with an affidavit of publication as hereinafter required shall be filed in the office of the county recorder of the county where the property is situated and the notice shall set forth:

(a) The date when the work or improvement was completed, or the date on which cessation from labor occurred first and the period of its duration.

(b) The owner's name or owners' names, as the case may be, the address of the owner or addresses of the owners, as the case may be, and the nature of the title, if any, of the person signing the notice.

(c) A description of the property sufficient for identification.

(d) The name of the contractor, if any.

(3) The notice shall be verified by the owner or his agent.

(4) A copy of the notice of completion shall be published once each week for three successive weeks in a newspaper of general circulation in the county where the land on which the work or improvement was performed is situated.

**History:** En. Sec. 3, Ch. 408, L. 1971.

**Title of Act**

An act to shorten the period for filing

mechanics' liens by providing for filing of a notice of completion and amending sections 45-501 and 45-502, R. C. M., 1947.

**45-504. (8342) What property affected.**

**Compiler's Note**

The decision in *Caird Engineering Works v. Seven-up Gold Mining Co., Inc.*, 111 M 471, annotated under these sections in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

**Mining Claims**

Limit of one acre to mechanic's lien, as set forth in this section, does not apply to mining claim. *Fausett v. Blanchard*, 154 M 301, 463 P 2d 319.

**45-505. (8343) Leasehold interest—how affected.**

**Compiler's Note**

The decision in *Caird Engineering Works v. Seven-up Gold Mining Co., Inc.*,

111 M 471, annotated under these sections in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

**45-506. (8344) Priority of lien over mortgage or other liens.**

**Lien Preferred to Subsequent Mortgage**

A mechanic's lien for performed work and furnished material for building, erected on land of decedent prior to his death, which was perfected August 23, 1963 after decedent's death, had priority over a mortgage executed by the suc-

cessor to the estate of the deceased on January 21, 1965 to the small business administration, an agency of the United States, which failed to protect itself by withholding a sufficient amount of the loan proceeds to retire the lien. *Hammer v. Chapin*, 256 F Supp 818, 820.

**45-513. Substitution of bond allowed — filing — amount — condition.**

Whenever a mechanics' lien has been filed upon real property or any improvements thereon, as enumerated in section 45-501, R. C. M. 1947, the owner of any interest in such property, whether legal or beneficial, may, at any time before the lien claimant has commenced an action to foreclose such lien, file a bond with the clerk of the district court in the county in which such property is situated, or, if such property is situated in more than one county, with the clerk of the district court of any



county in which a part of such property is situated. Such bond shall be in an amount one and one-half ( $1\frac{1}{2}$ ) times the amount of the said lien, and shall be either in cash or written by a corporate surety company. If written by a corporate surety, such bond shall be approved by a judge of the district court with which such bond is filed. The bond shall be conditioned that if the lien claimant shall be finally adjudged to be entitled to recover upon the claim upon which his lien is based, the principal or his sureties shall pay to such claimant the amount of his judgment, together with any interest, costs, attorney fees, and other sums which such claimant would be entitled to recover upon the foreclosure of a lien against the principal.

**History:** En. Sec. 1, Ch. 338, L. 1971.

**Title of Act**

An act providing that the owner of real property against which a mechanics' lien has been filed may substitute a bond for the security of the lien and that said real property shall then be released from the

effect of such lien, together with any improvements thereon, and providing, in such instance, that the lien claimant shall have an action upon the bond rather than an action to foreclose a lien, and providing that the statute of limitations for foreclosure of a mechanics' lien shall apply to an action upon such bond.

**45-514. Lien discharged upon filing of bond.** Upon the filing of a bond as provided in section 1 [45-513] of this act, the lien against the said real property shall forthwith be discharged and released in full and the said bond shall be substituted for such lien.

**History:** En. Sec. 2, Ch. 338, L. 1971.

**45-515. Action upon bond—period of limitation same.** When a bond is filed as provided in section 1 [45-513] of this act, the person filing such lien may bring an action upon the said bond. Such action shall be commenced within the time allowed for the commencement of an action upon foreclosure of a lien, and the statute of limitations applicable to a lien foreclosure shall apply to an action upon such bond as it would had no bond been filed.

**History:** En. Sec. 3, Ch. 338, L. 1971.

## CHAPTER 7—CROP LIENS FOR SEED, GRAIN AND HAIL INSURANCE

Section 45-704. Acknowledgment of satisfaction of lien.

45-707. Satisfaction of lien.

**45-704. (8362) Acknowledgment of satisfaction of lien.** Whenever the indebtedness which is a lien upon such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops, he is liable to any person injured thereby in the amount of such injury and the costs of the action. [Effective January 1, 1965.]

**History:** En. Sec. 4, Ch. 15, Ex. L. 1918; re-en. Sec. 8362, R. C. M. 1921; amd. Sec. 11-123, Ch. 264, L. 1963.

**Amendment**

The 1963 amendment deleted "as in the case of a chattel mortgage" after "ac-

knowledge satisfaction thereof" in the first part of the section; and inserted "within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops" in the latter part of the section.

**45-707. (8365) Satisfaction of lien.** Whenever the indebtedness, which is a lien upon such grain or other crops, is paid or satisfied on or before November 1 of the then current year, it is the duty of the lienor to acknowledge satisfaction thereof within twenty days after receiving payment, and to discharge the said lien of record, and if any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid he is liable to any person injured thereby in the amount of such injury and the costs of action. If any hail lien is not satisfied on or before the first day of March of the next succeeding year after the insurance was carried on the crop, the same shall be deemed satisfied and released of record. [Effective January 1, 1965.]

**History:** En. Sec. 3, Ch. 223, L. 1921; re-en. Sec. 8365, R. C. M. 1921; amd. Sec. 11-124, Ch. 264, L. 1963.

**Amendment**

The 1963 amendment deleted "as in the case of a chattel mortgage" after "acknowledge satisfaction thereof" in the first part of the first sentence.

## CHAPTER 8—THRESHERMEN'S LIENS

**Section 45-801.** Liens of threshermen, swathers and owners of combine harvester and thresher upon grain or crops.

**45-802.** Claim of lien, when, where and how filed, service of notice.

**45-809.** Acknowledgment of satisfaction of lien—penalty.

**45-801. (8366) Liens of threshermen, swathers and owners of combine harvester and thresher upon grain or crops.** All threshermen or swathers owning or operating threshing or swathing machines, and all owners of combine harvesters and threshers, shall have a lien upon the grain and other crops swathed or threshed by said threshing or swathing machine or cut and threshed by said combine harvester and thresher, for and on account of the services rendered and the labor performed by them on said grain and crops, and which lien may be claimed by the owner of said grain for the reasonable value of such services, if same are performed by him. Liens on grain and other crops shall be charged for at the prevailing price for that particular locality in which such grain or other crop is threshed, harvested or combined; and, provided, notices are given and lien is filed within the time provided by this act.

If the prevailing price for threshing, harvesting or combining grain or other crop is disputed by the thresherman or swather and the owner of the grain or other crop, the matter may be submitted to arbitration under the provisions of chapter 201, Title 93.

**History:** En. Sec. 1, Ch. 25, L. 1915; re-en. Sec. 8366, R. C. M. 1921; amd. Sec. 1, Ch. 20, L. 1929; amd. Sec. 1, Ch. 112, L. 1931; amd. Sec. 1, Ch. 124, L. 1933; amd. Sec. 1, Ch. 308, L. 1973.

**Amendments**

The 1973 amendment inserted the refer-

ences to swathing and swathers in the first sentence of the first paragraph; deleted from the first paragraph provisions limiting the lien to 7¢ per bushel for threshing most grains and to \$1.50 per acre for combining most grains; added the second paragraph; and made minor changes in style.

**45-802. (8367) Claim of lien, when, where and how filed, service of notice.** Every person intending to avail himself of the benefits of this act must file with the county clerk of the county in which said grain or other crops were grown, within ten days after the last service was rendered or labor performed in the threshing of said grain or other crops, or the cutting and harvesting and threshing by said combined harvester and thresher, a notice that within twenty days a lien, as specified in section 45-801, will be claimed, and within twenty days thereafter shall file with the county clerk and recorder of the county in which said grain or other crops were grown, a just and true account of the amount due him or them for such services or labor after allowing all just credits and offsets and containing a correct description of the grain or other crops to be charged with such lien, the price agreed upon for such threshing or cutting and harvesting, the name of the person, firm or corporation for whom such labor and services were performed, and a description of the lands as nearly as possible, upon which said grain or other crops were raised, and a description of the legal subdivision of land upon which said grain is stored, and if said grain is stored in an elevator, the locality of the said elevator, which statements of facts shall be verified by affidavit of the person claiming such lien, or his duly authorized agent or attorney, having knowledge of the facts; but any error or mistake in the account or description of the grain or other crops or of the property upon which it was raised, shall not invalidate such said lien.

If the grain or other crops so threshed, cut, harvested and threshed are being hauled from the machine or combine direct to the elevator or to any other purchaser, then the threshermen or owner of the combine desiring to claim such lien shall also serve written notices upon the elevatorman or other private purchaser, that he will claim and file a lien upon said grain or other crops for his services or labor performed in threshing, or combining and threshing the same.

**History:** En. Sec. 2, Ch. 25, L. 1915; amd. Sec. 1, Ch. 162, L. 1917; amd. Sec. 1, Ch. 71, L. 1921; re-en. Sec. 8367, R. C. M. 1921; amd. Sec. 2, Ch. 20, L. 1929; amd. Sec. 2, Ch. 112, L. 1931; amd. Sec. 2, Ch. 308, L. 1973.

#### Amendments

The 1973 amendment substituted "as specified in section 45-801" for "of not to

exceed twelve cents per bushel for grain threshed or not to exceed two dollars per acre for grains harvested and threshed with a combined harvester and thresher, except flax, clover seed, alfalfa seed, or other grass seeds, which shall be charged for at the prevailing price for that particular locality in which such grain or seed is threshed or combined" in the first paragraph.

**45-809. (8374) Acknowledgment of satisfaction of lien—penalty.** Whenever the indebtedness which is a lien upon any such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops, he is liable to any person injured thereby in the amount of such injury and the costs of action. [Effective January 1, 1965.]



**History:** En. Sec. 9, Ch. 25, L. 1915; re-en. Sec. 8374, R. C. M. 1921; amd. Sec. 11-125, Ch. 264, L. 1963.

**Amendment**

The 1963 amendment deleted "as in the case of a mortgage" after "acknowledgment"

edge satisfaction thereof" in the first part of the section; and inserted "within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops" in the latter part of the section.

## CHAPTER 9—FARM LABORERS' LIENS

### Section 45-911. Acknowledgment of satisfaction of lien—penalty.

**45-911. (8374.11) Acknowledgment of satisfaction of lien—penalty.** Whenever the indebtedness which is a lien upon any of such crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record, and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such crops, he is liable to any person injured thereby in the amount of such injury and costs of action. [Effective January 1, 1965.]

**History:** En. Sec. 11, Ch. 196, L. 1935; amd. Sec. 11-126, Ch. 264, L. 1963.

**Amendment**

The 1963 amendment deleted "as in the case of a chattel mortgage" after "acknowledgment of satisfaction thereof" in the first

part of the section; inserted "within thirty (30) days after being requested to do so by a person having a property interest in such crops" in the latter part of the section; and made a minor change in punctuation.

## CHAPTER 10—LABORERS' AND MATERIALMEN'S LIENS ON OIL AND GAS WELLS AND PIPELINES

### Section 45-1003. Manner of enforcing liens—duty of county clerks.

45-1004.1. How lien perfected.

45-1004.2. Date lien arises—preference over other liens—parity of liens.

45-1004.3. Priority of lien over mortgage or other liens.

**45-1003. (8377) Manner of enforcing liens—duty of county clerks.** The liens herein created shall be enforced in the same manner and the duty of county clerks with respect to the filing and abstracting of liens shall be the same as now provided by the laws of Montana for materialmen's and mechanic's liens.

**History:** En. Sec. 3, Ch. 45, L. 1917; re-en. Sec. 8377, R. C. M. 1921; amd. Sec. 2, Ch. 152, L. 1923; amd. Sec. 3, Ch. 143, L. 1957; amd. Sec. 1, Ch. 193, L. 1963; amd. Sec. 1, Ch. 170, L. 1973.

**Amendments**

The 1963 amendment inserted "arise, be perfected, have the same priority and" before "be enforced" near the beginning of the section; and, at the end of the section, added "with the following exceptions: (1) The statement of lien shall be filed with the county clerk of the county in which any part of such land,

leasehold, or pipeline is situated. (2) Such statement must be filed within six (6) months after the date upon which said material or services were last furnished or labor last performed under the contract."

The 1973 amendment deleted all the language inserted or added by the 1963 amendment and restored the section as found in the parent volume.

**Repealing Clause**

Section 2 of Ch. 193, Laws 1963 read "Sections 45-1004, 45-1005 and 45-1006, R. C. M. 1947, are hereby repealed."

**45-1004. Repealed.****Repeal**

Section 45-1004 (Sec. 4, Ch. 143, L. 1957), relating to the perfection of oil

and gas well and pipeline liens, was repealed by Sec. 2, Ch. 193, Laws 1963. For present law, see sec. 45-1004.1.

**45-1004.1. How lien perfected.** Every person, corporation or co-partnership claiming a lien under this chapter shall file with the county clerk of the county in which such land, leasehold, or pipeline, or some part thereof, is situated, a statement verified by affidavit setting forth the amount claimed and the items thereof, the dates on which labor was performed or material or services furnished, the name of the owner of the leasehold or pipeline, if known, the name of the claimant and his mailing address, a description of the leasehold or pipeline, and if the claimant be a claimant under section 45-1002, the name of the person for whom the labor was immediately performed or the material or services were immediately furnished. Such statement must be filed within six (6) months after the date upon which said material or services were last furnished or labor last performed under contract as aforementioned.

**History:** En. 45-1004.1 by Sec. 2, Ch. 170, L. 1973.

**Title of Act**

An act amending section 45-1003, R. C. M. 1947, relating to liens for labor and material furnished for use of oil or gas wells or pipelines by deleting any reference to perfecting, priority, and method of filing such liens; providing how such liens

are perfected; providing for the date such liens shall arise; providing for the preference of such lien over certain other liens; providing that all liens affixed by virtue of chapter 10 of Title 45, R. C. M. 1947, upon the same property shall be of equal standing; and providing for the priority of such lien over mortgage or other liens.

**45-1004.2. Date lien arises—preference over other liens—parity of liens.** The lien provided for in this chapter arises on the date of the furnishing of the first item of material or services or the date of performance of the first labor. Upon compliance with the provisions of section 45-1004.1, such lien shall be preferred to all other titles, charges, liens or encumbrances which may attach to or upon any of the property upon which a lien is given by this chapter subsequent to the date the lien herein provided for arises. All liens affixed by virtue of this chapter upon the same property shall be of equal standing.

**History:** En. 45-1004.2 by Sec. 3, Ch. 170, L. 1973.

**45-1004.3. Priority of lien over mortgage or other liens.** The lien herein provided for shall have no priority over other liens, encumbrances or mortgages which are filed or recorded prior to the date of the furnishing of the first item of material or services or the date of performance of the first labor.

**History:** En. 45-1004.3 by Sec. 4, Ch. 170, L. 1973.

**45-1005, 45-1006. Repealed.****Repeal**

Sections 45-1005, 45-1006 (Secs. 5 and 6, Ch. 143, L. 1957), relating to the priority of oil and gas well and pipeline

liens, were repealed by Sec. 2, Ch. 193, Laws 1963. For present law, see secs. 45-1004.2 and 45-1004.3.

## CHAPTER 11—MISCELLANEOUS LIENS

Section 45-1106. Agisters' liens and liens for service—priority.

45-1107. Secured party may take possession of property.

## 45-1104. (8381) Repealed.

**Repeal**

This section (Sec. 3933, Civ. C. 1895), relating to liens of sellers of personal

property, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

**45-1106. (8383) Agisters' liens and liens for service—priority.** Every person who, while lawfully in possession of an article of personal property, renders any service to the owner or lawful claimant thereof by labor or skill employed for the making, repairing, protection, improvement, safe-keeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner or lawful claimant for such service and for material, if any, furnished in connection therewith. A ranchman, farmer, agister, herder, hotel-keeper, livery, boarding, or feed stable-keeper, to whom any horses, mules, cattle, sheep, hogs, or other stock are entrusted, and there is a contract, express or implied, for their keeping, feeding, herding, pasturing, or ranching, has a lien upon such stock for the amount due for keeping, feeding, herding, pasturing, or ranching the same, and is authorized to retain possession thereof until the sum due is paid. The lien hereby created shall not take precedence over perfected security interests under the Uniform Commercial Code—Secured Transactions, or other recorded liens on the property involved, unless within ten days from the time of receiving the property, the person desiring to assert a lien thereon shall give notice in writing to said secured party or other lien holder, stating his intention to assert a lien on said property, under the terms of this act, and stating the nature and approximate amount of the work, or feed, performed or furnished or intended to be performed or furnished therefor.

Such service may be made either by personal service or by mailing by registered mail a copy of said notice to the secured party or other lien holder at his last known post-office address. Said service shall be deemed complete upon the deposit of the notice in the post office. [Effective January 1, 1965.]

**History:** Similar early acts were Sec. 1, p. 331, Bannack Stat.; re-en. Sec. 29, p. 514, Cod. Stat. 1871; re-en. Sec. 848, 5th Div. Rev. Stat. 1879; re-en. Sec. 1394, 5th Div. Comp. Stat. 1887; amd. Sec. 3935, Civ. C. 1895.

En. Sec. 3935, Civ. C. 1895; re-en. Sec. 5805, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1921; re-en. Sec. 8383, R. C. M. 1921; amd. Sec. 11-127, Ch. 264, L. 1963. Cal. Civ. C. Sec. 3051. First paragraph based on Field Civ. C. Sec. 1696.

**Amendment**

The 1963 amendment substituted "perfected security interests under the Uniform Commercial Code — Secured Transactions" in the first part of the third sentence in the first paragraph for "the

lien of prior chattel mortgages"; and substituted "secured party" for "mortgagee" in the third sentence in the first paragraph and in the first sentence in the second paragraph.

**Other Recorded Liens**

The term "other recorded liens" includes conditional sales contracts. Williamson v. Skerritt, 141 M 422, 378 P 2d 215.

**Notice to Secured Party**

Automobile repairman's asserted agister's lien did not have priority over bank's security interest where person authorizing repairs was not registered owner or agent of owner and notice of lien was not given to bank within ten days of receipt of vehicle for repair; failure to file copy of



lien with registrar of motor vehicles as required by 53-110(a) also rendered the asserted agister's lien invalid; repossession

of vehicle on behalf of bank did not, under these circumstances, constitute conversion. *Parker v. West*, — M —, 505 P 2d 94.

**45-1107. (8384) Secured party may take possession of property.** Within ten days after the date of such mailing, or five days after such personal service, the secured party or other lien holder, or his representative, shall have the right to take possession of said property upon payment of the amount of the lien then accrued. A failure on the part of such secured party or other lien holder so to do shall constitute a waiver of the priority of such security interest or other lien over the lien created by this act. [Effective January 1, 1965.]

**History:** En. Sec. 2, Ch. 117, L. 1921; re-en. Sec. 8384, R. C. M. 1921; amd. Sec. 11-128, Ch. 264, L. 1963. Cal. Civ. C. Sec. 3052.

cured party" for "mortgagee" in two places; substituted "security interest" for "chattel mortgage" in the second sentence; and added "over the lien created by this act" at the end of the section.

#### **Amendment**

The 1963 amendment substituted "se-

### **CHAPTER 12—LIENS OF PHYSICIANS, NURSES AND HOSPITALS IN PERSONAL INJURY CLAIMS**

**45-1203. (8395.3) Same—when filed with clerk of court.**

#### **Notice to Attorneys of Record**

Attorneys of record in a personal injury action are chargeable as agents for their clients with notice and knowledge imparted to their client by filing of

notice of a hospital lien in the action. *Sisters of Charity of Providence of Montana v. Nichols*, 157 M 106, 483 P 2d 279.

### **CHAPTER 13—STOPPAGE IN TRANSIT**

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

**45-1301 to 45-1305. (8396 to 8400) Repealed.**

#### **Repeal**

These sections (Secs. 3970 to 3974, Civ. C. 1895; Secs. 5837 to 5841, Rev. C. 1907; Secs. 8396 to 8400, R. C. M. 1921), relating

to stoppage in transit, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

### **CHAPTER 14—CROP OR GRAIN LIEN FOR DUSTING OR SPRAYING**

**Section 45-1410. Acknowledgment of satisfaction and discharge of lien—penalty for failure.**

**45-1410. Acknowledgment of satisfaction and discharge of lien—penalty for failure.** Whenever the indebtedness which is a lien upon any such grain or crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such grain or crops, he is liable to any person injured thereby in the amount of such injury and the costs of action. [Effective January 1, 1965.]

**History:** En. Sec. 10, Ch. 205, L. 1953; amd. Sec. 11-129, Ch. 264, L. 1963.

**Amendment**

The 1963 amendment deleted "as in the case of a mortgage" after "acknowledge

satisfaction thereof" in the first part of the section; and inserted "within thirty (30) days after being requested to do so by a person having a property interest in such grain or crops" in the latter part of the section.

## CHAPTER 15—FEDERAL TAX LIEN

- Section 45-1501. Federal tax lien—place of filing.  
 45-1502. Execution of notices and certificates.  
 45-1503. Duties of filing officer.  
 45-1504. Fees.  
 45-1505. Uniformity of interpretation.  
 45-1506. Short title.  
 45-1507. Tax liens and notices filed before effective date of this act.

**45-1501. Federal tax lien—place of filing.** (a) Notices of liens upon real property for taxes payable to the United States, and certificates and notices affecting the liens shall be filed in the office of the clerk and recorder of the county or counties in which the real property subject to a federal tax lien is situated.

(b) Notices of liens upon personal property, whether tangible or intangible, for taxes payable to the United States and certificates and notices affecting the liens shall be filed as follows:

(1) if the person against whose interest the tax lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state;

(2) in all other cases in the office of the clerk and recorder of the county where the taxpayer resides at the time of filing of the notice of lien.

**History:** En. Sec. 1, Ch. 228, L. 1967.

Carolina, South Dakota, Tennessee, Utah, Virginia, Wisconsin and Wyoming.

**NOTE.**—The following states have enacted the Uniform Federal Tax Lien Registration Act: Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South

**Title of Act**

An act to revise the Uniform Federal Tax Lien Registration Act, authorizing the filing of notices of liens for taxes payable to the United States of America and of certificates discharging such liens, and to make uniform the law with reference thereto; repealing sections 84-3901, 84-3902, 84-3903, 84-3904, 84-3905, 84-3906, 84-3907, R. C. M. 1947.

**45-1502. Execution of notices and certificates.** Certification by the secretary of the treasury of the United States or his delegate of notices of liens, certificates, or other notices affecting tax liens entitles them to be filed and no other attestation, certification, or acknowledgment is necessary.

**History:** En. Sec. 2, Ch. 228, L. 1967.

**45-1503. Duties of filing officer.** (a) If a notice of federal tax lien, a refiling of a notice of tax lien, or a notice of revocation of any

certificate described in subsection (b) is presented to the filing officer, and

(1) he is the secretary of state, he shall cause the notice to be marked, held and indexed in accordance with the provisions of subsection (4) of section 87A-9-403, Revised Codes of Montana 1947, as if the notice were a financing statement within the meaning of that code; or

(2) he is any other officer described in section 1 [45-1501] of this act, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the serial number of the district director and the total unpaid balance of the assessment appearing on the notice of lien.

(b) If a certificate of release, nonattachment, discharge or subordination of any tax lien is presented to the secretary of state for filing he shall

(1) cause a certificate of release or nonattachment to be marked, held and indexed as if the certificate were a termination statement within the meaning of the uniform commercial code, except that the notice of lien to which the certificate relates shall not be removed from the files, and

(2) cause a certificate of discharge or subordination to be held, marked and indexed as if the certificate were a release of collateral within the meaning of the uniform commercial code.

(c) If a refiled notice of federal tax lien referred to in subsection (a) or any of the certificates or notices referred to in subsection (b) is presented for filing with any other filing officer specified in section 1 [45-1501], he shall permanently attach the refiled notice or the certificate to the original notice of lien and shall enter the refiled notice or the certificate with the date of filing in any alphabetical federal tax lien index on the line where the original notice of lien is entered.

(d) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of federal tax lien or certificate or notice affecting the lien, filed on or after July 1, 1967, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The fee for a certificate is two dollars (\$2). Upon request the filing officer shall furnish a copy of any notice of federal tax lien or notice or certificate affecting a federal tax lien for a fee of one dollar (\$1) per page.

**History:** En. Sec. 3, Ch. 228, L. 1967.

**45-1504. Fees.** The fee for filing and indexing each notice of lien or certificate or notice affecting the tax lien is:

(1) for a tax lien on real estate, two dollars (\$2).

(2) for a tax lien on tangible and intangible personal property, two dollars (\$2).



(3) for a certificate of discharge or subordination, one dollar (\$1).

(4) for all other notices, including a certificate of release or non-attachment, two dollars (\$2). The officer shall bill the district directors of internal revenue on a monthly basis for fees for documents filed by them.

**History:** En. Sec. 4, Ch. 228, L. 1967.

**45-1505. Uniformity of interpretation.** This act shall be so construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

**History:** En. Sec. 5, Ch. 228, L. 1967.

**45-1506. Short title.** This act may be cited as the Revised Uniform Federal Tax Lien Registration Act.

**History:** En. Sec. 6, Ch. 228, L. 1967.

**45-1507. Tax liens and notices filed before effective date of this act.** Filing officers with whom notices of federal tax liens, certificates and notices affecting such liens have been filed on or before July 1, 1967, shall, after that date, continue to maintain a file labeled "federal tax lien notices filed prior to July 1, 1967," containing notices and certificates filed in numerical order of receipt. If a notice of lien was filed on or before July 1, 1967, any certificate or notice affecting the lien shall be filed in the same office.

**History:** En. Sec. 9, Ch. 228, L. 1967.

#### **Separability Clause**

Section 7 of Ch. 228, Laws 1967 read "Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision

or application and to this end the provisions of the act are severable."

#### **Repealing Clause**

Section 8 of Ch. 228, Laws 1967 read "Repeal of prior acts. Sections 84-3901, 84-3902, 84-3903, 84-3904, 84-3905, 84-3906 and 84-3907, R. C. M. 1947, and all other acts or parts of acts in conflict herewith are hereby repealed."

## TITLE 46—LIVESTOCK

- Chapter 1. Livestock industry—department of livestock—duties and powers, 46-103.1, 46-104, 46-105.
2. Administrator—federal veterinary inspectors—quarantine inspection and destruction of diseased stock—licensing dairies, milk plants and slaughterhouses, 46-202 to 46-204, 46-206 to 46-209.1, 46-211 to 46-214, 46-216 to 46-222, 46-224, 46-226 to 46-236, 46-239, 46-239.1 to 46-239.3, 46-240, 46-243, 46-247.
3. Tuberculin regulation, sale and distribution, 46-301, 46-302.
4. Montana meat inspection law, Repealed—Section 201, Chapter 310, Laws of 1974.
5. Butchers' and meat peddlers' licenses—duty as to hides of slaughtered cattle, 46-501, 46-503, 46-506.
6. Recording of marks and brands, 46-601, 46-603 to 46-607, 46-609.
7. Inspectors and detectives, 46-701, 46-703 to 46-705, 46-707, 46-709.
8. Inspection of livestock before sale, removal or shipment, 46-801.1 to 46-801.4, 46-802 to 46-804, 46-806, 46-809 to 46-813.
9. Livestock markets—inspection and quarantine—license and bonding, 46-902 to 46-904, 46-906 to 46-918.1, 46-920.
10. Estrays—disposal of, 46-1001 to 46-1006, 46-1008, 46-1011, 46-1012.
11. Hides of slaughtered cattle—regulation—hide dealers' licenses, 46-1101.1, 46-1101.2, 46-1107, 46-1114.
14. Legal fences—liability of owners for trespassing stock, 46-1410, 46-1411, 46-1413.
15. Herd districts, 46-1501.
17. Animals running at large, 46-1701.
18. Roundup and sale of abandoned horses, 46-1801, 46-1804.
19. Bounties for killing wild animals—killing dogs injuring livestock, 46-1901 to 46-1904, 46-1907 to 46-1909, 46-1912, 46-1914, 46-1915.
20. Impounding livestock or domestic animals, 46-2004, 46-2007.
21. Sheep—protection from predatory animals—tax, 46-2102, 46-2104.
23. Grass conservation—grazing districts, 46-2301, 46-2302, 46-2307 to 46-2318, 46-2322, 46-2323, 46-2325, 46-2331, 46-2332.
24. Rendering or disposal plants—licensing—regulation, 46-2401 to 46-2409, 46-2411, 46-2412.
25. Artificial insemination of animals and poultry, 46-2505, 46-2515.
26. Regulation of industry treating or feeding garbage to swine and other animals, 46-2602 to 46-2610.
27. County livestock protective committees, 46-2703, 46-2705, 46-2706.
28. Cattle protective districts, 46-2801 to 46-2810.
29. Livestock dealers, 46-2901 to 46-2907.
30. Unlawful driving of livestock, 46-3006.

### CHAPTER 1—LIVESTOCK INDUSTRY—DEPARTMENT OF LIVESTOCK—DUTIES AND POWERS

- Section 46-103.1. Definitions.
- 46-104. Duties and powers of department.
- 46-105. Audit of bills—payment of expenses.

#### 46-101 to 46-103. (3253 to 3255) Repealed.

##### Repeal

Sections 46-101 to 46-103 (Secs. 1 to 3, Ch. 51, L. 1917), relating to the appointment and compensation of members, and

the organization of, the livestock commission, were repealed by Sec. 201, Ch. 310, Laws of 1974.

**46-103.1. Definitions.** Unless the context requires otherwise, in Title 46:

(1) "Board" means the board of livestock provided for in section 82A-1303;

(2) "Department" means the department of livestock provided for in Title 82A, chapter 13.

**History:** En. 46-103.1 by Sec. 48, Ch. 310, L. 1974.

**Title of Act**

An act for revision of the laws relating to the department of livestock.

**46-104. Duties and powers of department.** The department shall exercise general supervision over, and, so far as possible, protect the livestock interests of the state from theft and disease, and recommend legislation which, in the judgment of the department, fosters this industry. The department may compel the attendance of witnesses, employ counsel to assist in the prosecution of violations of laws made for the protection of the livestock interests, and assist in the prosecution of persons charged with feloniously branding or stealing livestock, or any other crime under the laws of this state for the protection of stock owners. It may adopt rules governing the recording and use of livestock brands.

**History:** En. Sec. 4, Ch. 51, L. 1917; re-en. Sec. 3256, R. C. M. 1921; amd. Sec. 49, Ch. 310, L. 1974.

at the beginning of the last sentence; and made minor changes in phraseology.

**Amendments**

The 1974 amendment substituted references to "department" throughout the section for references to "livestock commission" and "commission"; substituted "It may adopt rules" for "It shall also have power to make rules and regulations"

**Livestock Markets**

In the regulation of livestock markets under section 46-907 the livestock commission has the power to determine whether or not a showing of convenience and necessity has been made. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780, 781. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

**46-105. Audit of bills—payment of expenses.** The department shall audit all bills for expenses incurred by it in the discharge of its duties, which shall be paid out of the department's moneys in the earmarked revenue fund.

**History:** En. Sec. 5, Ch. 51, L. 1917; re-en. Sec. 3257, R. C. M. 1921; amd. Sec. 88, Ch. 147, L. 1963; amd. Sec. 50, Ch. 310, L. 1974.

**Amendments**

The 1963 amendment substituted "which shall be paid out of the livestock commission moneys in the earmarked revenue fund" at the end of the section for "and when found correct, to certify the same to the state auditor, who shall thereupon draw a warrant upon the state treasurer in favor of the party or parties entitled thereto for the amount so certified,

which warrants shall be drawn upon and paid out of the livestock commission fund. which said fund shall be created by placing to its credit the amounts heretofore directed to be placed to the credit of the sheep inspection and indemnity fund and the stock inspection and detective fund by section 84-5212, and other funds hereafter appropriated for the support and maintenance of the said commission."

The 1974 amendment substituted "department" and "department's" for "livestock commission"; and made a minor change in phraseology.

**46-106. (3258) Repealed.**

**Repeal**

Section 46-106 (Sec. 6, Ch. 51, L. 1917), relating to the annual report of the com-

mission, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.



**46-107. (3259) Repealed.****Repeal**

Section 46-107 (Sec. 7, Ch. 51, L. 1917), relating to the repeal of sections relating to the board of stock commissioners and

board of sheep commissioners and transfer of powers, was repealed by Sec. 201, Ch. 310, Laws of 1974.

**CHAPTER 2—ADMINISTRATOR—FEDERAL VETERINARY INSPECTORS  
—QUARANTINE INSPECTION AND DESTRUCTION OF DISEASED  
STOCK—LICENSING DAIRIES, MILK PLANTS AND  
SLAUGHTERHOUSES**

- Section 46-202. Verification and approval of claims.  
 46-203. Administrator—appointment and qualifications.  
 46-204. Administrator—duties.  
 46-206. Appointment of federal veterinary inspectors.  
 46-207. Authority of department and agents.  
 46-208. Powers of department.  
 46-209. Poultry industry—powers and authority of department.  
 46-209.1. Administrator's expertise to be considered.  
 46-211. Adoption of rules.  
 46-212. Establishment of livestock disease control area—entry into area—compulsory inspection area, when.  
 46-213. Duty of county assessor.  
 46-214. Owner guilty of misdemeanor, when.  
 46-216. Sale of carcasses unsanitarily slaughtered or handled.  
 46-217. Authority of municipal corporations.  
 46-218. Classification of animals as to compensation for slaughter.  
 46-219. Payment for other personal property.  
 46-220. Indemnity—from what funds paid.  
 46-221. Presentation of claims for indemnity.  
 46-222. Indemnity for class 2 animals in state less than one hundred and twenty (120) days.  
 46-224. Examination and payment of claims.  
 46-226. Sale of condemned carcasses—disposal of proceeds.  
 46-227. Rules—agreement with federal government.  
 46-228. Persons entitled to indemnity.  
 46-229. Compensation from federal government or other agency.  
 46-230. Expenses, how paid—lien and foreclosure.  
 46-231. Expense of cleaning and disinfecting carriers' facilities.  
 46-232. Licensing of milk plants and dairies selling milk or cream for public consumption.  
 46-233. Exceptions of certain producers of meats and dairy products.  
 46-234. Co-operation by public officers.  
 46-235. Slaughterhouse license—fees and renewals.  
 46-236. Duty to report contagious diseases.  
 46-239. Same—civil liability.  
 46-239.1. Feedlot defined.  
 46-239.2. Dead animals in feedlots—inspection required.  
 46-239.3. Penalty.  
 46-240. Power of department concerning oaths and witnesses.  
 46-243. Personal liability—members and officers of department.  
 46-247. Sale of diseased carcasses without inspection forbidden.  
 46-248. [Transferred from Title 94.]

**46-201. (3260) Repealed.****Repeal**

Section 46-201 (Sec. 1, Ch. 262, L. 1921), relating to creation of the livestock

sanitary board, was repealed by Sec. 201, Ch. 310, Laws of 1974.

**46-202. Verification and approval of claims.** All claims against the department of livestock must be verified by oath of the claimant, or his agent with knowledge of the facts.

**History:** En. Sec. 2, Ch. 262, L. 1921; re-en. Sec. 3261, R. C. M. 1921; amd. Sec. 20, Ch. 97, L. 1961; amd. Sec. 51, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "department of livestock" for "board" and inserted "the" before "claimant."

**46-203. Administrator — appointment and qualifications.** (1) The board shall appoint a person to be directly responsible to it for the administration of the laws relating to animal health.

(2) He must have a doctor of veterinary medicine degree from an accredited college or school and he must be licensed to practice veterinary medicine in this state.

**History:** En. Sec. 3, Ch. 262, L. 1921; re-en. Sec. 3262, R. C. M. 1921; amd. Sec. 52, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment rewrote this section which read: "The board shall appoint a chief executive officer, who shall act

as the state veterinary surgeon. He must be a graduate of a regular and reputable veterinary college, or of the veterinary department of a regular and reputable university, and he must be licensed to practice veterinary medicine in the state of Montana."

**46-204. Administrator—duties.** The administrator, subject to the rules of the board, may act for and perform the duties imposed by law on the board, when the board is not in session, but any order or regulation promulgated by him shall be subject to review, modification, or annulment by the board.

**History:** En. Sec. 4, Ch. 262, L. 1921; re-en. Sec. 3263, R. C. M. 1921; amd. Sec. 53, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment rewrote this section which read: "The state veterinary surgeon shall be the executive officer of the livestock sanitary board, and shall act

as its secretary; and, subject to the rules and regulations of the board, he shall have power to act for and perform the duties imposed by law on the board, when the board is not in session, but any order or regulation promulgated by him shall be subject to review, modification, or annulment by the board at its next, or any subsequent meeting."

#### 46-205. (3264) Repealed.

##### Repeal

Section 46-205 (Sec. 5, Ch. 262, L. 1921), relating to appointments by the veterinary

surgeon of inspectors and deputies, was repealed by Sec. 201, Ch. 310, Laws of 1974.

**46-206. Appointment of federal veterinary inspectors.** With the approval of either the federal veterinarian in charge in this state, or the United States department of agriculture, the department of livestock may appoint federal veterinarians or federal lay inspectors stationed in this state, as deputies or agents for the department. All federal officers so appointed as deputies or agents of the department possess the powers and duties of regular deputies or agents of the department but they shall act without compensation and hold office only at the pleasure of the department.

**History:** En. Sec. 6, Ch. 262, L. 1921; re-en. Sec. 3265, R. C. M. 1921; amd. Sec. 54, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment deleted "By and

with the consent of the livestock sanitary board" at the beginning of the section; substituted "federal veterinarian" for "federal veterinary inspector"; substituted "United States department of agriculture" for "chief of the United States bureau of

animal industry"; substituted "department of livestock" for "state veterinary surgeon"; substituted "department" for "live-stock sanitary board" in four places; and made minor changes in phraseology.

**46-207. Authority of department and agents.** In the performance of his official duties, an agent or officer of the department may enter on or in a lot, yard, land, building, room, premises, inclosure, car, wagon, boat, or other place or vehicle used for the treatment, storage, manufacture, display, or transportation of animals, meat, or dairy products, intended for sale or disposal as food. The agent or officer may enter anywhere where there may be found livestock affected with, or which has been exposed to, or which the officer has reason to believe is either affected with, or has been exposed to, an infectious, contagious, communicable, or dangerous disease, or disease-carrying insects.

**History:** En. Sec. 7, Ch. 262, L. 1921; re-en. Sec. 3266, R. C. M. 1921; amd. Sec. 55, Ch. 310, L. 1974.

to the "state veterinary surgeon"; substituted "department" for "livestock sanitary board"; and made changes in phraseology and punctuation.

#### Amendments

The 1974 amendment deleted references

**46-208. Powers of department.** The department may:

(1) Supervise the sanitary conditions of livestock in this state, under the provisions of the constitution and statutes of this state and the rules adopted by the department. The department may quarantine a lot, yard, land, building, room, premises, inclosure, or other place or section in this state, which is or may be used or occupied by livestock, and which, in the judgment of the department is infected or contaminated with an infectious, contagious, communicable, or dangerous disease, or disease-carrying medium by which the disease may be communicated. The department may quarantine livestock in this state, when the livestock is affected with, or has been exposed to disease or disease-carrying medium. The department may prescribe treatments and enforce sanitary rules which are necessary and proper to circumscribe, extirpate, control, or prevent the diseases.

(2) Foster, promote, and protect the livestock industry in this state by the investigation of diseases and other subjects related to ways and means of prevention, extirpation, and control of diseases, or to the care of livestock and its products; and to this end to establish and maintain a laboratory, and to make, or cause to be made, biologic products, curatives, and preventative agents; and to do or perform any other acts and things as may be necessary or proper in the fostering, promotion, or protection of the livestock industry in this state.

(3) Adopt rules and orders which it considers necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting livestock in this state, and to this end may adopt rules and orders necessary or proper governing inspections and tests of livestock intended for importation into this state, before it may be imported into this state.

(4) Adopt rules and orders which it considers necessary or proper for the inspection, testing, and quarantine of all livestock imported into this state.



(5) Adopt rules and orders which it considers necessary or proper for the supervision, inspection, and control of the standards and sanitary conditions of slaughterhouses, meat depots, meat and meat food products, dairies, milk depots, milk and its by-products, barns, dairy cows, factories, and other places and premises where meat, or meat foods, milk or its products, or any thereof intended for sale or consumption as food are produced, kept, handled, or stored. For the purposes of this act an authorized representative of the department, may take samples of a product so produced, kept, handled, or stored, for analysis or testing by the department's chemist, bacteriologist, or the state chemist, and the records of the samples and their analysis and test, when identified, as to the sample by the oath of the officer taking it, and verified, as to the analysis or test, by the oath of the chemist or bacteriologist making it, is prima facie evidence of the facts set forth in it, when offered in evidence in a prosecution or action at law or in equity for violation of this act, or a rule or order of the board adopted under this act. These standards, in so far as they relate to dairies or milk and its by-products, may not include standards of weight or measurement.

(6) Adopt rules and orders which seem necessary or proper for the supervision and control of manufactured and refined foods for livestock, and the manufacture, importation, sale, and method of using a biologic remedy or curative agent for the treatment of diseases of livestock. However, as far as practicable the standards approved by the United States department of agriculture shall be adopted.

(7) Install an adequate system of meat inspection at any time and in such places as public welfare may demand under the rules which may provide fees for the maintenance of such inspection, and which shall provide ways and means for shipping home-grown and home-killed meats into any city in this state. As far as practicable, the rules shall conform with the meat-inspection requirements of the United States bureau of animal industry.

(8) Slaughter or cause to be slaughtered, any livestock in this state known to be affected with, or which has been exposed to, an infectious, contagious, communicable, or dangerous disease, when such slaughter is necessary for the protection of other livestock; and destroy, or cause to be destroyed, all barns, stables, sheds, out-buildings, fixtures, furniture, and personal property infected with any such infectious, contagious, communicable, or dangerous disease, when they cannot be thoroughly cleaned and disinfected and the destruction is necessary to prevent the spreading of the disease.

(9) Indemnify the owner of any property destroyed by order of the department under this act, or any rules or orders adopted by the department under this act.

(10) Require persons, firms, and corporations engaged in the production or handling of meat or meat food products, or dairy products or any thereof, to furnish statistics of the quantity and cost of the food and food products produced or handled, and the name and address of persons supplying them any of the products.

**History:** En. Sec. 8, Ch. 262, L. 1921; re-en. Sec. 3267, R. C. M. 1921; amd. Sec. 56, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "The department may" for "The livestock sanitary board shall have the power" at the beginning of the section; deleted former subdivisions 1 and 2 pertaining to super-

vision of the state veterinary surgeon, deputies, inspectors, and other employees and to removal of appointees, subordinates, and employees; redesignated the subdivisions to account for the deletions; substituted references to "department" throughout the section for references to "board" and to "livestock sanitary board"; and made changes in phraseology, punctuation and style.

**46-209. Poultry industry—powers and authority of department.** For the promotion and protection of the poultry industry, and to prevent, control, and exterminate infectious, contagious, dangerous and destructive diseases affecting poultry, the department shall:

(1) Supervise the sanitary condition of poultry in this state, under the provisions of the constitution and statutes of this state, and the rules adopted by the department. The department may quarantine any lot, yard, land, building, room, premises, inclosure, or other place or section in this state, which is or may be used or occupied by poultry, and which, in the judgment of the department is infected or contaminated with an infectious, contagious, communicable, or dangerous disease, or disease-carrying medium by which the disease may be communicated. The department may quarantine any poultry in this state, when the poultry is affected with, or has been exposed to, disease or disease-carrying medium. The department may prescribe treatments and enforce sanitary rules which are necessary and proper to circumscribe, extirpate, control or prevent the diseases.

(2) Foster, promote and protect the poultry industry in this state by the investigation of diseases and other subjects related to ways and means of preventing, controlling, and exterminating diseases of poultry; adopt and enforce rules for the prevention and extermination of such diseases, and perform all other acts and things as may be necessary or proper in the fostering, promotion, or protection of the poultry industry in this state.

(3) Adopt and enforce rules and orders necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable or dangerous diseases affecting poultry in this state, and to this end adopt and enforce rules and orders necessary or proper governing inspections and tests of all poultry intended for importation into this state, before it may be imported into this state.

(4) Adopt and enforce rules and orders necessary or proper for the inspection, testing, and quarantine of all poultry imported into this state.

**History:** En. Sec. 1, Ch. 161, L. 1929; amd. Sec. 57, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted references to "department" in the caption, in

the introductory clause, and in subsection (1) for references to "livestock sanitary board," "board" and "state veterinary surgeon" and made changes in phraseology, punctuation, and style.

**46-209.1. Administrator's expertise to be considered.** In any action taken by the board in section 46-208 and 46-209 the board shall ask for and

consider the expertise and judgment of the administrator of the laws relating to animal health.

History: En. 46-209.1 by Sec. 58, Ch. 310, L. 1974.

**46-211. Adoption of rules.** The department shall adopt and enforce rules for the inspection and tuberculin test of dairy cattle, or other animals, and for the inspection, test, treatment, or disposition of livestock affected with, or which may have been exposed to, infectious, contagious, communicable, or dangerous disease, and for the quarantines provided for in this act.

History: En. Sec. 9, Ch. 262, L. 1921; re-en. Sec. 3268, R. C. M. 1921; amd. Sec. 59, Ch. 310, L. 1974.

**Amendments**

The 1974 amendment substituted "Adop-

tion" for "Promulgation" in the caption and substituted "The department shall adopt" for "It shall be the duty of the livestock sanitary board to promulgate" at the beginning of the section.

**46-212. Establishment of livestock disease control area—entry into area—compulsory inspection area, when.** Upon receipt of a petition signed by not less than seventy-five per cent (75%) of the livestock owners of the species of animals to be inspected, tested, treated, or vaccinated, and representing not less than fifty per cent (50%) of such species in any school district, as determined from the permanent records of the board of county commissioners describing school district boundaries, of any county in the state of Montana, petitioning for the area control, treatment, prevention, or eradication of any dangerous disease of livestock within such school district, the Montana board of livestock is authorized and empowered to establish such school district as a disease control area and to enforce the inspection, test, treatment, or vaccination of all livestock of the species designated within such school district in accordance with the rules and regulations promulgated by the Montana department of livestock for the inspection, eradication, treatment, or vaccination of such livestock and to reimburse the owners of livestock slaughtered by order of the Montana department of livestock or its authorized agent in accordance with the laws of Montana governing the payment of such animal or animals.

Provided that in any circumscribed disease control area as established under this act, by the Montana department of livestock, no other livestock of the species designated by the Montana department of livestock to be inspected, tested, treated, or vaccinated, shall enter the disease control area unless inspected, tested, treated, or vaccinated under the direction of the Montana department of livestock or are accompanied by a satisfactory health certificate or except under special permit and restrictions provided by the Montana department of livestock.

Provided further that when seventy-five per cent (75%) or more of the school districts in any county in Montana are established under this act by the Montana department of livestock as disease control areas, it becomes mandatory on the part of the remaining livestock owners in such county to submit their livestock of one or more species for in-



spection, test, treatment, or vaccination, as directed by the Montana department of livestock.

**History:** En. Sec. 1, Ch. 94, L. 1943; amd. Sec. 1, Ch. 27, L. 1973.

#### Amendments

The 1973 amendment substituted "school district, as determined from the permanent records of the board of county commissioners describing school district

boundaries" in the first paragraph for "township, as determined by government survey"; substituted "school district" for "township" elsewhere throughout the section; and substituted "board of livestock" or "department of livestock" for "livestock sanitary board" throughout the section.

**46-213. Duty of county assessor.** The assessment roll of the county in which the disease control area is to be established is the basis for computing the required percentage of livestock owners and livestock. The county assessor shall certify to the department, when the necessary seventy-five per cent (75%) of the owners of livestock representing not less than fifty per cent (50%) of the species of livestock to be inspected, tested, treated, or vaccinated have signed the required petition.

**History:** En. Sec. 2, Ch. 94, L. 1943; amd. Sec. 60, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "Montana livestock sanitary board at Helena" and made minor changes in phraseology and punctuation.

**46-214. Owner guilty of misdemeanor, when.** A person in a disease control area who does not gather his livestock after being notified by the department or its agent, to have the livestock available or who refuses to have the livestock inspected, tested, treated, or vaccinated or violates this act, is guilty of a misdemeanor.

**History:** En. Sec. 3, Ch. 94, L. 1943; amd. Sec. 61, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "Montana livestock sanitary board" and made minor changes in phraseology.

**46-216. Sale of carcasses unsanitarily slaughtered or handled.** It is unlawful for a person, firm, or corporation to sell as food for human beings, or to possess as human food intended for sale, the carcass or part of carcass of an animal slaughtered under unsanitary conditions, or which carcass or part of carcass has been prepared, handled, or kept under unsanitary conditions. The department shall see that this section is enforced.

**History:** En. Sec. 10, Ch. 262, L. 1921; re-en. Sec. 3269, R. C. M. 1921; amd. Sec. 62, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "livestock sanitary board" and made minor changes in phraseology and punctuation.

**46-217. Authority of municipal corporations.** This act does not prevent the governing authority of a municipal corporation from enacting or enforcing ordinances for the inspection of slaughterhouses, meat depots, meat markets, meat food products, creameries, butter or cheese factories, dairies, and dairy products, sold or offered for sale in the limits of the municipal corporation. An ordinance may not be enforced in conflict with the powers of this act delegated to the department, its officers, or agents.

History: En. Sec. 11, Ch. 262, L. 1921; re-en. Sec. 3270, R. C. M. 1921; amd. Sec. 63, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "livestock sanitary board" and made minor changes in phraseology and punctuation.

**46-218. Classification of animals as to compensation for slaughter.** Animals, slaughtered under the direction of the department by order of the board, under this act, are divided into two classes for the purposes of compensation:

(1) Animals determined by the department to be affected with an incurable disease, which are destroyed by order of the board, are designated as animals of class 1 and unless otherwise provided each of the animals shall be paid for on the basis of seventy-five per cent (75%) of its appraised value. The county in which the animal was owned at the time it was determined to be affected with an incurable disease, is liable in part, as later provided, for an indemnity to be paid for the animal. The ownership and county are determined by an affidavit of the owner of the animal or his agent. Each animal directed to be destroyed shall be appraised by a representative or an authorized agent of the department with the owner agreeing in writing as to the value of the animal. When appraised, due consideration shall be given to its breeding value as well as its dairy or meat value and the condition of the animal as to the disease and the present and probable effect of the disease on the animal. In the absence of an agreement, there shall be appointed three (3) competent, disinterested parties, one appointed by the department, one by the owner, and a third by the first two, to appraise each animal, taking into consideration its breeding value as well as its dairy or meat value and the condition of the animal as to the disease and the present probable effect of the disease on the animal. The judgment of the majority is the judgment of the appraisers and is binding on both parties as the final determination of indemnity to be paid for each animal. The total compensation of each group of appraisers is limited to five dollars (\$5) for the group appraisal, one-half ( $\frac{1}{2}$ ) of which shall be paid by the department. The total amount of indemnity paid by the state and a county for an animal may not exceed the actual sound value of an animal of its class, and the total combined amount of indemnity paid for the animal by the state and a county may not exceed the sum of one hundred dollars (\$100) for a registered purebred animal or the sum of fifty dollars (\$50) for a grade animal. Animals presented for appraisal as purebreds shall be accompanied by their registration papers at the time of appraisal or they shall be appraised as grades. If purebreds are less than three (3) years old and not registered, the department may grant a reasonable time for their registration and presentation of their registration papers to the appraiser. Registration papers shall accompany the claim for indemnity.

(2) Animals of class 1 shall be paid for on the basis of their full appraised value as determined in this section if no evidence of incurable disease is disclosed by autopsy, bacteriologic, serologic, microscopic, or other findings. The total combined amount of indemnity paid by the state and a county for an animal may not exceed the actual sound value of an

animal of its class. The total combined amount of indemnity paid by the state and a county for the animal may not exceed one hundred dollars (\$100) for a registered purebred animal or fifty dollars (\$50) for a grade animal.

(3) Animals which are determined by the department to be affected with or exposed to foot-and-mouth disease, rinderpest, contagious pleura pneumonia, surra, other infectious-contagious, communicable, or dangerous disease, which is not of its nature necessarily fatal, and are destroyed by order of the department as a sanitary safeguard, are designated as animals of class 2 and each animal shall be paid for on the basis of its full appraised value. The appraised value shall be determined in the manner set out in subsection (1) of this section. The appraisal of the animals shall be based on the meat, dairy, or breeding value of the animal, but where appraisal is based on breeding value of the animal, no appraisal may exceed three (3) times its meat or dairy value. The total amount of indemnity paid by the state for an animal may not exceed the actual sound value of an animal in its class; and no indemnity for a class 2 animal may be paid by a county. In the case of destruction of an animal afflicted with brucellosis (Bang's disease), no indemnity shall be paid for the animal, unless the board, in its discretion, determines the best interests of this state will be served by payment of an indemnity. In this event, the board shall set out standards of indemnity by rules, and may not pay in excess of one hundred dollars (\$100) for a registered purebred animal, or fifty dollars (\$50) for a grade animal. In all cases where the federal government, or agency other than the state, compensates the owner in whole or in part for livestock destroyed as a sanitary safeguard, the amount of compensation from the state shall be determined under section 46-229.

(4) Animals which are injured or killed while they are being inspected or tested under an order of the department or its agent, and if the animals do not come within either class 1 or class 2 may be paid for at their full appraised value, if the claim for the animal is recommended for payment at a meeting of the department. Where it is shown that the injury or death of the animal was not proximately due to the negligence of the owner or his agent the whole claim, when approved, shall be paid out of department funds. The limit of indemnity for an animal paid for by the state may not exceed that fixed by this act for animals of class 2.

**History:** En. Sec. 12, Ch. 262, L. 1921; re-en. Sec. 3271, R. C. M. 1921; amd. Sec. 1, Ch. 75, L. 1943; amd. Sec. 1, Ch. 107, L. 1949; amd. Sec. 64, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "direction of the department by order of the board" for "direction of the Montana livestock sanitary board or an agent thereof" in the introductory clause; substituted references to "department" throughout the section for references to "Montana livestock sanitary board"; substituted "de-

termined by the department" for "determined by the state veterinary surgeon or by a deputy state veterinary surgeon" in the first sentences of subsections (1) and (3); substituted "order of the board" for "order of such officer" in the first sentence of subsection (1); substituted "order of the department" for "order of such officer" in the first sentence of subsection (3); substituted "board" for "livestock sanitary board" in two places in the fifth sentence of subsection (3); and made minor changes in phraseology, punctuation and style.

**46-219. Payment for other personal property.** Personal property other than livestock destroyed by order of the department shall be paid for



on the basis of its appraised value. The appraised value is determined in the manner specified in section 46-218 for the determination of the appraised value of animals.

**History:** En. Sec. 13, Ch. 262, L. 1921; re-en. Sec. 3272, R. C. M. 1921; amd. Sec. 2, Ch. 75, L. 1943; amd. Sec. 65, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "Montana livestock sanitary board or an authorized representative thereof"; substituted "section 46-218" for "the preceding section"; and made minor changes in phraseology and punctuation.

**46-220. Indemnity—from what funds paid.** In payment for animals or property destroyed by order of the department, the state shall pay one-half ( $\frac{1}{2}$ ) of the indemnity out of the money at the disposal of the department. The county liable in part for the indemnity, as determined by this act, shall pay one-half ( $\frac{1}{2}$ ) of the total indemnity out of the general fund of the county.

**History:** En. Sec. 14, Ch. 262, L. 1921; re-en. Sec. 3273, R. C. M. 1921; amd. Sec. 66, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "livestock sanitary board" in two places and made minor changes in phraseology and punctuation.

**46-221. Presentation of claims for indemnity.** Claims against the state and county which arise from the destruction of animals or property destroyed by order of the department shall be made on forms provided by the department. They must contain an affidavit by the owner or his agent with knowledge of the animal or property certifying to the ownership of the animal or property, the county in which they are owned, and that the animal or property has been destroyed, under the law and the rules of the department. These claims must be accompanied by a certificate from the department that the animal or property was ordered destroyed. The claims shall also be accompanied by a certificate of appraisal as appraisal is determined under section 46-218, together with an account of sale showing the net proceeds from the sale of the animal, if any, paid to the owner of the animal.

**History:** En. Sec. 15, Ch. 262, L. 1921; re-en. Sec. 3274, R. C. M. 1921; amd. Sec. 4, Ch. 75, L. 1943; amd. Sec. 67, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "Montana livestock sanitary board" in three places and made minor changes in phraseology and punctuation.

**46-222. Indemnity for class 2 animals in state less than one hundred and twenty (120) days.** Indemnity for animals of class 2, when the animals have not been in this state for at least one hundred and twenty (120) days and the payment is authorized by the department under section 46-228 (5), shall be paid out of department funds.

**History:** En. Sec. 5, Ch. 75, L. 1943; amd. Sec. 68, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "Montana livestock sanitary

board"; deleted "and approved by the state board of examiners" after "authorized by the department"; substituted "department funds" for "sanitary board funds"; and made minor changes in phraseology and punctuation.

**46-224. Examination and payment of claims.** Claims against the state arising under this act, if found correct, shall be processed and paid from funds of the department.

**History:** En. Sec. 16, Ch. 262, L. 1921; re-en. Sec. 3275, R. C. M. 1921; amd. Sec. 21, Ch. 97, L. 1961; amd. Sec. 69, Ch. 310, L. 1974.

**Amendments**

The 1974 amendment substituted "funds of the department" for "any funds or account at the disposal of the livestock sanitary board."

**46-226. Sale of condemned carcasses—disposal of proceeds.** Where the carcass of an animal ordered destroyed under this act is found, on official post-mortem inspection, to be fit for human consumption, the owner shall receive the net proceeds from the sale of the carcass. The proceeds shall be deducted from his claim against the state and county for the slaughter. A representative of the department, may, when considered advisable or necessary or when it is desired by the owner, sell the carcass on terms he considers to be in the best interests of this state, and the net proceeds obtained from the sale shall be paid to the owner. This procedure does not invalidate the owner's claim for indemnity for any balance due him.

**History:** En. Sec. 18, Ch. 262, L. 1921; re-en. Sec. 3277, R. C. M. 1921; amd. Sec. 1, Ch. 177, L. 1937; amd. Sec. 70, Ch. 310, L. 1974.

**Amendments**

The 1974 amendment substituted "department" for "livestock sanitary board" in the third sentence and made minor changes in phraseology and punctuation.

**46-227. Rules—agreement with federal government.** When the department determines that it is necessary to eradicate or control an infectious, contagious, communicable, or dangerous disease of livestock in this state, in co-operation with the United States department of agriculture or other federal agency and to appraise and destroy animals affected with, or which have been exposed to a disease, or to destroy property in order to remove the infection and complete the cleaning and disinfection of the premises, or to do any act or incur any other expense reasonably necessary in suppressing this disease, the board may accept and adopt on behalf of the state, the rules adopted by the United States department of agriculture or other federal agency under authority of an act of Congress, or the portion considered necessary, suitable, or applicable. The department may adopt other rules necessary or desirable for this purpose, and co-operate with the United States department of agriculture or other federal agency in the enforcement of the rules accepted and adopted.

**History:** En. Sec. 2, Ch. 177, L. 1937; amd. Sec. 71, Ch. 310, L. 1974.

States department of agriculture" for "United States bureau of animal industry" in three places; inserted "The department may" at the beginning of the last sentence; and made minor changes in phraseology and punctuation.

**Amendments**

The 1974 amendment substituted "department" for "livestock sanitary board" in the first sentence; substituted "United

**46-228. Persons entitled to indemnity.** The owner of an animal or property destroyed under this act, is entitled to indemnity, except in the following cases:

- (1) Animals belonging to the United States.
- (2) Animals brought into this state which violate this act, or rules of the department.
- (3) Animals which the owner or claimant knew to be diseased, or had notice of the disease at the time they came into his possession.
- (4) Animals which had the disease for which they were slaughtered, or which were destroyed because of exposure to the disease, at the time of their arrival in this state. However, an animal of the second class shipped into this state under department rules and accompanied by the proper certificate of health from a recognized state or federal veterinarian may be paid for when payment is authorized by the department.
- (5) Animals which have not been in this state for at least one hundred and twenty (120) days before the discovery of the disease; however, animals of the second class which have not been in the state one hundred and twenty (120) days may be paid for when payment is authorized by the department.
- (6) When the owner or agent has not used reasonable diligence to prevent disease or exposure to disease.
- (7) When the owner or agent has not complied with the rules of the department with respect to animals condemned.
- (8) No compensation or indemnity will be paid for the destruction of livestock affected with tuberculosis, or other infectious, contagious, communicable, or dangerous disease, unless the entire herd or band of affected livestock is under the supervision of the department for the eradication of the disease.
- (9) When animals condemned are not destroyed within sixty (60) days after they are determined to be affected with or exposed to a disease which requires them to be destroyed by order of the department.

**History:** En. Sec. 19, Ch. 262, L. 1921; re-en. Sec. 3278, R. C. M. 1921; amd. Sec. 22, Ch. 97, L. 1961; amd. Sec. 72, Ch. 310, L. 1974.

#### **Amendments**

The 1974 amendment substituted "rules of the department" for "regulations of the livestock sanitary board" at the end of subdivision (2); substituted "department rules" for "livestock sanitary board regulations" in the second sentence of subdivision (4); substituted "authorized by the department" for "authorized at a meeting of the livestock sanitary board"

at the end of subdivision (4); substituted "authorized by the department" for "authorized at a meeting of the livestock sanitary board" at the end of subdivision (5); substituted "rules of the department" for "rules and regulations of the livestock sanitary board" in subdivision (7); substituted "supervision of the department" for "supervision of the livestock sanitary board" in subdivision (8); substituted "order of the department" for "order of the livestock sanitary board" at the end of subdivision (9); and made changes in phraseology and punctuation.

**46-229. Compensation from federal government or other agency.** If the federal government, or an agency other than the state or county, compensates the owner for livestock or property destroyed by order of the department the amount of the compensation from the federal government, or other agency, shall be deducted from the owner's claim, as filed against the state and county, that is, from the balance that remains after the net salvage price received from the sale or other disposal of the condemned



animal has been deducted from the appraised value. If the owner or agent of the livestock or property destroyed by order of the department forfeits an indemnity, which the owner would otherwise be entitled to from the federal government, or compensating agency other than the state or county, by violation of the rules of the federal government, or other agency; an amount equal to the indemnity which would have been paid by the federal government, or other indemnifying agency, but for the forfeiture, shall also be deducted from the owner's claim; that is, the balance that remains after the net salvage price received from the sale or other disposal of the condemned animal has been deducted from the appraised value.

**History:** En. Sec. 20, Ch. 262, L. 1921; re-en. Sec. 3279, R. C. M. 1921; amd. Sec. 3, Ch. 75, L. 1943; amd. Sec. 1, Ch. 164, L. 1945; amd. Sec. 73, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "Montana livestock sanitary board" in two places; substituted "rules of the federal government" for "regulations of the federal government" in the second sentence; and made minor changes in phraseology and punctuation.

**46-230. Expenses, how paid—lien and foreclosure.** The expense of inspecting, testing, supervision of quarantine, supervision of dipping, supervision of disinfection, and supervision of other treatment of livestock by the department, under this act, and the sanitary inspection of dairies, packing houses, meat depots, slaughterhouses, milk depots, and other premises under this act, shall be paid for by the department. However, the owner of the livestock or property is liable for all expenses, except the salary of the supervising officer, representing the department, when the owner, agent, or person in charge of the livestock or property has violated the rules of the department. These expenses are a lien on the livestock or other property, and the department may retain possession of the livestock until the charges and expenses are paid. The lien is not dependent on possession, and the lien may be foreclosed in the name of the agent of the department by sale of the stock, or as many as may be necessary to pay the sum of the costs, by sale at public auction, and ten (10) days' notice by posting in three (3) public places in the county. The lien may also be foreclosed by an action in a court of competent jurisdiction against the owner of the livestock to recover the amount of charges and expenses.

**History:** En. Sec. 21, Ch. 262, L. 1921; re-en. Sec. 3280, R. C. M. 1921; amd. Sec. 74, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted references to "department" throughout the

section for references to "livestock sanitary board"; substituted "rules of the department" for "regulations of the livestock sanitary board" in the second sentence; and made minor changes in phraseology and punctuation.

**46-231. Expense of cleaning and disinfecting carriers' facilities.** The expense of cleaning and disinfecting cars, yards, or other transportation facilities of a common carrier, when required by the department, is a charge against the common carrier. Also, the expense of supervising the cleaning and disinfecting of cars for transportation of livestock, when required at a point other than disinfection points agreed on between the department and the carrier, is a charge against the common carrier.

**History:** En. Sec. 22, Ch. 262, L. 1921; re-en. Sec. 3281, R. C. M. 1921; amd. Sec. 75, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "livestock sanitary board" and "board" and made minor changes in phraseology and punctuation.

**46-232. Licensing of milk plants and dairies selling milk or cream for public consumption.** (1) It is unlawful for the following businesses to operate in this state without first obtaining a license from the department of livestock:

(a) A dairy selling milk or cream for public consumption in the form in which it is originally produced.

(b) Condensed, evaporated, or powdered milk plant.

(c) Fluid milk plant. A milk plant is a place where milk or cream is purchased or collected and prepared for distribution to the consumer in liquid form but is not produced at this place.

(2) A license expires on December 31 of the year issued. The department may, following the procedures in the Montana Administrative Procedure Act [82-4201 to 82-4225], deny, suspend, or revoke a license when it determines that a person to whom the license is issued has failed to comply with the rules of the department or has failed to conduct his establishment in a sanitary manner. All license fees collected shall be deposited into the general fund.

(3) The department may issue a restraining order prohibiting a dairy from selling or giving away milk or cream not produced or handled under the laws of this state, or the rules of the department. It is unlawful for a dairy, while restrained, to sell or give away for public consumption milk or cream produced or handled by the dairy and it is also unlawful for a dairy products manufacturing plant, milk plant, or cream station to purchase or use the cream or milk from a dairy while the dairy is restrained.

(4) The following license fees are charged for licenses issued under this section:

(a) Condensed, evaporated, or powdered milk factory, fifty dollars (\$50).

(b) Fluid milk plant, fifty dollars (\$50).

(c) Dairy, five dollars (\$5).

(5) A person violating this act is guilty of a misdemeanor.

**History:** En. Sec. 23, Ch. 262, L. 1921; re-en. Sec. 3282, R. C. M. 1921; amd. Sec. 11, Ch. 35, L. 1923; amd. Sec. 1, Ch. 170, L. 1929; amd. Sec. 1, Ch. 382, L. 1973; amd. Sec. 76, Ch. 310, L. 1974.

#### Amendments

The 1973 amendment substituted "department of livestock, animal health division" for "livestock sanitary board" throughout the section; deleted "and without having been converted into some manufactured product" from the end of clause 1; inserted "Fluid" before "milk plants" at the beginning of clause 3 and in the schedule of license fees; deleted a

reference to the veterinary surgeon from the second sentence of the first paragraph after the numbered clauses; inserted "following the procedures outlined in the Montana Administrative Procedure Act" and "deny, suspend or" in the second sentence of the first paragraph after the numbered clauses; deleted from the second paragraph after the numbered clauses a first sentence exempting from the license requirement dairies that produce only butter or for sale to manufacturing plants but requiring them to comply with laws and regulations; increased the license fees from \$5.00 to \$50 for condensed, evaporated or powdered milk factories

with output of less than 500,000 pounds, from \$25 to \$50 for such factories with output of more than 500,000 pounds, from \$5.00 to \$50 for fluid milk plants, from \$1.00 to \$5.00 for dairies of less than 20 cows, and from \$2.50 to \$5.00 for dairies of more than 20 cows; and made numerous minor changes in phraseology and style.

The 1973 amendment substituted "department of livestock, animal health division" for "livestock sanitary board" throughout the section; deleted "and without having been converted into some manufactured product" from the end of subdivision (1)(a); inserted "fluid" before "milk plants" at the beginning of subdivision (1)(b) and in subdivision (4)(b); deleted a reference to the veterinary surgeon from the second sentence of subdivision (2); inserted "following the procedures outlined in the Montana Administrative Procedure Act" and "deny,

suspend or" in the second sentence of subsection (2); deleted from subsection (3) a first sentence pertaining to the exemption from licensing of dairies producing milk or cream for sale to dairy products manufacturing plants or producing only butter; revised the classifications and increased the license fees; and made minor changes in phraseology and style.

The 1974 amendment inserted the numerical subsection designations; inserted the alphabetical subdivision designations in subsections (1) and (4); deleted "animal health division" after "department of livestock" at the end of the introductory clause of subsection (1); substituted "department" for "department of livestock, animal health division" in two places in subsection (2); substituted "department" for "department of livestock" in subsection (3); and made minor changes in phraseology and punctuation.

#### 46-233. Exceptions of certain producers of meats and dairy products.

The owners or operators of slaughterhouses, packing houses, meat depots, dairies, creameries, butter factories, cheese factories, or other places of business engaged in the production, storage, or transportation of meats, meat foods, or dairy products, are not required to procure a license from the department of health and environmental sciences, in so far as the business of production, storage or transportation of these food products are concerned. This act does not limit the supervision or regulation of the sanitary condition of a restaurant, hotel, boardinghouse, or retail market, or the products sold or offered for sale thereat, by the department of health and environmental sciences, nor does this act limit the duties imposed by law on the department of health and environmental sciences to make sanitary rules for the eradication or control of an epidemic of human disease which may exist in a community.

**History:** En. Sec. 24, Ch. 262, L. 1921; re-en. Sec. 3283, R. C. M. 1921; amd. Sec. 77, Ch. 310, L. 1974.

##### Amendments

The 1974 amendment substituted "de-

partment of health and environmental sciences" for "state board of health" in three places; substituted "sanitary rules" for "sanitary regulations" near the end of the section; and made minor changes in phraseology and punctuation.

**46-234. Co-operation by public officers.** The state and local boards of health of a county, city, town, or village shall co-operate with and assist the department in matters which relate to the execution of its sanitary powers regarding livestock and their food products under this act, in the manner which the department prescribes, either by general rule or direct order.

**History:** En. Sec. 25, Ch. 262, L. 1921; re-en. Sec. 3284, R. C. M. 1921; amd. Sec. 78, Ch. 310, L. 1974.

##### Amendments

The 1974 amendment substituted "de-

partment" for "livestock sanitary board" in two places; substituted "general rule" for "general regulation" near the end of the section; and made changes in phraseology.



**46-235. Slaughterhouse license—fees and renewals.** It is unlawful for a person, firm, or corporation to maintain or conduct a slaughterhouse, meat packing house, or meat depot in this state without having a license issued by the department. The annual fee for licenses issued under this section is one dollar (\$1) and shall be paid into the general fund. All licenses expire on December 31, of the year in which they are issued, and shall be renewed by the department on request of the licensee. However, when the department finds that the place for which the license is issued is not conducted in accordance with the rules and orders of the board, made under this act, then the department shall revoke the license and may not renew it until the place is in a sanitary condition in accordance with the department rules.

**History:** En. Sec. 26, Ch. 262, L. 1921; re-en. Sec. 3285, R. C. M. 1921; amd. Sec. 79, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted references to "department" throughout the section for references to "livestock sanitary board" and "board"; substituted "rules and orders of the board" for

"rules, regulations, and orders of said board" in the last sentence; substituted "department rules" for "such rules and regulations" at the end of the section; deleted an obsolete proviso at the end of the section pertaining to licenses issued by the state board of health; and made minor changes in phraseology and punctuation.

**46-236. Duty to report contagious diseases.** A person, including the owner or custodian, who has reason to suspect the existence of a dangerous, infectious, contagious, or communicable disease in livestock, or the presence of exposed animals to the disease, in this state shall immediately give notice to the department.

**History:** En. Sec. 27, Ch. 262, L. 1921; re-en. Sec. 3286, R. C. M. 1921; amd. Sec. 80, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "state veterinary surgeon" at the end of the section and made minor changes in phraseology.

**46-239. Same—civil liability.** A person, firm, or corporation who violates this act or rules or orders of the department is liable for damages sustained by a person because of the violation. The damages may be recovered by the person in a civil action in a court of competent jurisdiction.

**History:** En. Sec. 30, Ch. 262, L. 1921; re-en. Sec. 3289, R. C. M. 1921; amd. Sec. 81, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "rules

or orders of the department" for "regulations or orders of the livestock sanitary board (or state veterinary surgeon)" and made minor changes in phraseology.

**46-239.1. Feedlot defined.** A feedlot is a confined livestock feeding operation where the owner or operator of the feedlot feeds livestock belonging to others for a fee.

**History:** En. Sec. 1, Ch. 32, L. 1974.

#### Title of Act.

An act requiring the inspection of live-

stock which dies in the feedlot; and providing a penalty.

**46-239.2. Dead animals in feedlots — inspection required.** When a stock animal dies in a feedlot, the feedlot operator shall notify the board

of livestock or its representative of the death. The operator may not dispose of the carcass until a livestock inspector has observed it and determined the brand of the owner of the animal. A livestock inspector observing a dead stock animal pursuant to this section shall, within forty-eight (48) hours, send written notification to the owner of the animal.

History: En. Sec. 2, Ch. 32, L. 1974.

**46-239.3. Penalty.** A feedlot operator who violates section 2 [46-239.2] of this act is guilty of a misdemeanor, and on conviction shall be subject to imprisonment for not more than six (6) months or a fine of not more than five hundred dollars (\$500), or both.

History: En. Sec. 3, Ch. 32, L. 1974.

**46-240. Power of department concerning oaths and witnesses.** When in the exercise of its powers or the discharge of its duties, it becomes necessary for an employee of the department to investigate facts and conditions, he may administer oaths, take affidavits, and compel the attendance and testimony of witnesses.

History: En. Sec. 31, Ch. 262, L. 1921; re-en. Sec. 3290, R. C. M. 1921; amd. Sec. 82, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "board" in the caption;

substituted "an employee of the department" for "any member of the livestock sanitary board, the state veterinary surgeon, or authorized agent"; and made minor changes in phraseology and punctuation.

#### 46-241. (3291) Repealed.

##### Repeal

This section (Sec. 32, Ch. 262, L. 1921), relating to the livestock sanitary board

account, was repealed by Sec. 242, Ch. 147, Laws 1963.

#### 46-242. (3292) Repealed.

##### Repeal

Section 46-242 (Sec. 33, Ch. 262, L. 1921), relating to the annual report of the

state veterinary surgeon, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

**46-243. (3293) Personal liability—members and officers of department.** No member of the department is personally liable for damage resulting from his official acts or decisions under this act, or a rule, or order adopted under this act, unless it is for his own willful wrong or gross negligence.

History: En. Sec. 34, Ch. 262, L. 1921; re-en. Sec. 3293, R. C. M. 1921; amd. Sec. 83, ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "board" in the caption;

substituted "department is personally liable" for "livestock sanitary board, or any officers, agent, or employee of said board shall be personally liable"; and made minor changes in phraseology and punctuation.

**46-247. Sale of diseased carcasses without inspection forbidden.** It is unlawful for a person to sell or offer for sale the carcass or any part of the carcass of an animal having actinomycosis (big jaw), tuberculosis, or any other infectious or contagious disease unless it has been inspected

and passed by a representative of the department of livestock or the United States department of agriculture.

**History:** En. Sec. 1, p. 163, L. 1901; re-en. Sec. 8492, Rev. C. 1907; amd. Sec. 1, Ch. 39, L. 1917; re-en. Sec. 11243, R. C. M. 1921; Sec. 94-35-172, R. C. M. 1947; redes. 46-247 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 199, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "department of livestock or the United States department of agriculture" for "livestock sanitary board of the United States bureau of animal industry" at the end of the section and made minor changes in phraseology.

### 46-248. [Transferred from Title 94.]

#### Compiler's Notes

This section was originally numbered 94-35-173. Section 29, Ch. 513, Laws of 1973 renumbered it to appear in this title.

Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-35-173.

## CHAPTER 3—TUBERCULIN REGULATION, SALE AND DISTRIBUTION

Section 46-301. Tuberculin—permission for sale or distribution of.

46-302. Same—report of sales or distribution.

**46-301. Tuberculin—permission for sale or distribution of.** A person, firm, or corporation desiring to sell or distribute tuberculin for animal use in this state must first secure permission from the department of livestock.

**History:** En. Sec. 1, Ch. 118, L. 1917; re-en. Sec. 3296, R. C. M. 1921; amd. Sec. 84, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "department of livestock" for "livestock sanitary board" and made minor changes in phraseology.

**46-302. Same—report of sales or distribution.** A person, firm, or corporation, who has secured permission from the department to sell or distribute tuberculin for animal use in this state shall, on the same day he sells, furnishes, or supplies tuberculin, report in writing to the department the name and address of the person and a statement of the amount of tuberculin supplied to him.

**History:** En. Sec. 2, Ch. 118, L. 1917; re-en. Sec. 3297, R. C. M. 1921; amd. Sec. 85, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "livestock sanitary board" in two places and made minor changes in phraseology.

## CHAPTER 4—MONTANA MEAT INSPECTION LAW

(Repealed—Section 201, Chapter 310, Laws of 1974)

### 46-401 to 46-415. (3298.1 to 3298.15) Repealed.

#### Repeal

Sections 46-401 to 46-415 (Secs. 1 to 15, Ch. 142, L. 1931), comprising "the

Montana meat inspection law," were repealed by Sec. 201, Ch. 310, Laws of 1974.



CHAPTER 5—BUTCHERS' AND MEAT PEDDLERS' LICENSES—DUTY  
AS TO HIDES OF SLAUGHTERED CATTLE

- Section 46-501. Butcher and meat peddler defined.  
46-503. Inspection and marking of hides of slaughtered cattle—records—bill of sale to be presented, when—license or inspection not necessary, when.  
46-506. Proviso.

**46-501. (3298.16) Butcher and meat peddler defined.** A person, firm, corporation, or association who slaughters neat cattle for the purpose of selling or distributing the meat or by-products of the cattle in this state, and who maintains slaughterhouses for this purpose, and a person, firm, corporation, or association who maintains a meat market or meat markets for the purpose of selling or distributing any of the meat or by-products of the cattle in this state, and who, in either case, complies with the rules of the department of livestock and the board of health and environmental sciences, and with the city or town health ordinances where the business is operated, or any other ordinance pertaining to meat dealers, is, for the purpose of this act, designated a "butcher." A person, firm, corporation, or association who slaughters neat cattle or buys and sells any dress beef or veal, and who does not maintain a licensed slaughterhouse or market, is, for the purpose of this act, designated a "meat peddler."

**History:** En. Sec. 1, Ch. 172, L. 1931; amd. Sec. 1, Ch. 42, L. 1943; amd. Sec. 86, Ch. 310, L. 1974.

**Amendments**

The 1974 amendment substituted "rules of the department of livestock and the board of health and environmental sciences" for "rules and regulations of the Montana livestock sanitary board and the state board of health" in the first sentence and made minor changes in phraseology and punctuation.

**46-503. (3298.18) Inspection and marking of hides of slaughtered cattle—records—bill of sale to be presented, when—license or inspection not necessary, when.** (1) All persons shall have the hide in its entirety with tail and ears attached, of each beef or veal inspected by a sheriff or his deputy in the county where the animal was slaughtered. The sheriff or his deputy shall mark the hide in the manner which the department requires by rule. The sheriff shall make the inspection required by this act. Each of the four quarters presented shall be stamped with an ink stamp; the stamp shall be provided by the county and the form specified by the department however, the stamp need not be affixed if the meat has been inspected and stamped by an inspector of the department. The sheriff or deputy shall keep a record and issue a certificate of inspection, on a form provided by the county; the form shall be specified by the department, giving the butcher's, peddler's, or person's name, the place of business, the serial number of the inspection of the hide, the brand on the hide, the date of inspection, and the place where the inspection was made. The officer who makes the inspection shall forward a copy of the inspection certificates to the department, and to the county clerk of the county in which the inspection was made, on or before the first day of each month. The inspection certificates shall be placed on file in these offices.

(2) When ownership of the carcass and hide presented is claimed on

a bill of sale, the officer making the inspection shall demand and receive the original bill of sale, which shall be attached to the inspector's certificate sent to the county clerk and recorder. When the bills of sale cover cattle not included in the inspection, the inspector shall issue to the owner of the bill of sale a receipt for the bill of sale. The receipt shall describe the balance of the cattle covered by the original bill of sale.

(3) Instead of the inspection provided for above, the department may in its discretion designate a person to make a live inspection of all meat cattle at any licensed slaughterhouse and to issue a certificate of inspection. The inspector shall inspect and mark the hide and identify the meat in the manner which the department prescribes by rule. The marking of the hide is sufficient compliance with section 46-508.

(4) In case of an emergency or custom slaughter involving not more than two (2) cattle a licensed slaughterhouse may slaughter without a live inspection if the hide from the cattle is held separate from other hides until inspected and cleared by the inspector in charge.

**History:** En. as part of Sec. 3, Ch. 172, L. 1931; amd. Sec. 1, Ch. 78, L. 1941; amd. Sec. 1, Ch. 37, L. 1961; amd. Sec. 87, Ch. 310, L. 1974.

#### **Amendments**

The 1974 amendment inserted the numerical subsection designations; substi-

tuted references to "department" throughout subsections (1) and (3) for references to "livestock commission," "livestock sanitary board," and "secretary of the livestock commission at Helena"; and made minor changes in phraseology and punctuation.

**46-506. Proviso.** This act does not prevent an inspector appointed by the department from making an inspection.

**History:** En. Sec. 3, Ch. 78, L. 1941; amd. Sec. 88, Ch. 310, L. 1974.

#### **Amendments**

The 1974 amendment rewrote this sec-

tion which read: "Nothing herein provided shall prevent such inspection being made by an inspector appointed by the livestock commission."

## **CHAPTER 6—RECORDING OF MARKS AND BRANDS**

- Section 46-601. Recorder of marks and brands.
- 46-603. Recording of brands required.
- 46-604. Application for recording—record of brands.
- 46-605. Designation of years for re-recording brands.
- 46-606. Right of owner of recorded brand.
- 46-607. Publication of notice of re-recording brands.
- 46-609. Fees for department.

**46-601. (3299) Recorder of marks and brands.** The department of livestock is the general recorder of marks and brands.

**History:** En. Sec. 2940, Pol. C. 1895; re-en. Sec. 1790, Rev. C. 1907; re-en. Sec. 3299, R. C. M. 1921; amd. Sec. 89, Ch. 310, L. 1974.

#### **Amendments**

The 1974 amendment substituted "department of livestock" for "secretary of the livestock commission."

**46-603. (3301) Recording of brands required.** It is unlawful for a person, firm, or corporation to artificially brand, mark, or cause to be artificially branded or marked, any domestic animal or livestock, running

at large, on the public domain, or open range, or which may run or stray at large or on the public domain or open range, unless the artificial brand or mark has been recorded or re-recorded with the department, in the name of the person, firm, or corporation, within the period of ten (10) years immediately preceding the branding or marking.

**History:** En. Sec. 1, Ch. 144, L. 1921; re-en. Sec. 3301, R. C. M. 1921; amd. Sec. 90, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "general recorder of marks and brands" and made minor changes in phraseology and punctuation.

**46-604. (3302) Application for recording—record of brands.** A person, firm, or corporation desiring to have recorded an artificial mark or brand for use in distinguishing or identifying the ownership of any domestic animal or livestock, shall make application for the mark or brand to the department. The application must be in writing, and must contain the name, residence, and post-office address of the applicant, and the species of the animals on which the mark or brand is to be used. The department shall designate for the applicant's use some practical form of mark or brand, distinguishable with reasonable certainty from all other marks and brands recorded, or re-recorded, within the period of ten (10) years immediately preceding the time of filing the application, in the name of some person, firm, or corporation other than the applicant. The department shall designate the position on the animals on which the mark or brand shall be placed, and the species of animals on which the mark or brand may be used. The department shall keep a record in a book kept by it for that purpose, of the particular mark or brand, the position on the animal where the mark or brand is to be used, the species of animals on which the mark or brand is to be used, and the date of recording. The record is a public record and is prima facie evidence of the facts recorded in it.

**History:** En. Sec. 2, Ch. 144, L. 1921; re-en. Sec. 3302, R. C. M. 1921; amd. Sec. 91, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted refer-

ences to the "department" throughout the section for references to the "general recorder of marks and brands" and made minor changes in phraseology.

**46-605. (3303) Designation of years for re-recording brands.** Each tenth year after 1921 is the year for re-recording artificial marks and brands used to distinguish and identify the ownership of domestic animals and livestock. The department shall, on the application of a person, firm, or corporation, or the transferee of the person, firm, or corporation, made in a year which is a year for re-recording marks and brands, to re-record a mark or brand which at the time of the application stands of record in the department in the name of the person, firm, or corporation. A mark or brand which was not originally recorded or re-recorded in the name of the person, firm, or corporation, during the re-recording year last preceding the date when the application is filed, or originally recorded in the name of the person, firm, or corporation, or his or its predecessor or predecessors in interest between the time of the application and the re-recording year last preceding the application, is not of record in the department.



**History:** En. Sec. 3, Ch. 144, L. 1921; re-en. Sec. 3303, R. C. M. 1921; amd. Sec. 92, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted refer-

ences to "department" throughout the section for references to "general recorder of marks and brands" and made minor changes in phraseology and punctuation.

**46-606. (3304) Right of owner of recorded brand.** A person, firm, or corporation in whose name a mark or brand is recorded, is entitled to the exclusive use of the mark or brand on the species of animal and in the position designated in the record. A copy of the record certified by the department is prima facie evidence of this right; and the certificate is also prima facie evidence that the person, firm, or corporation entitled to use the mark or brand is the owner of all animals on which it appears in the position and on the species of animal stated in the certificate.

**History:** En. Sec. 4, Ch. 144, L. 1921; re-en. Sec. 3304, R. C. M. 1921; amd. Sec. 93, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "general recorder of marks and brands" and made minor changes in phraseology and punctuation.

#### Ownership of Cattle

Although under this section and section 67-308, prima facie owners of the recorded brand have the same interest in the cattle bearing their brand as shown in brand record, joint ownership of the cattle may be contradicted and overcome

by other evidence under section 93-301-11. *Marshall v. Minlschmidt*, 148 M 263, 419 P 2d 486, 490.

In action by administrator of estate of deceased partner against surviving partners to recover assets transferred by deceased during his last illness, evidence that deceased had a half interest in partnership cattle and failure of defendants to produce any of the partnership records at the trial in the lower court, overcame the prima facie showing of one-third interest in the partnership cattle arising from the recording of the brand in name of three persons. *Marshall v. Minlschmidt*, 148 M 263, 419 P 2d 486, 491.

**46-607. (3305) Publication of notice of re-recording brands.** Between the period beginning January 1 and ending June 30 in each re-recording year, the department shall publish in at least one (1) issue of at least one (1) newspaper of general circulation in each county of this state, in which a newspaper is published, a notice to the effect that the year is a year for re-recording marks and brands, and that no mark or brand continues of record unless re-recorded. The department shall also mail to each person, firm, and corporation in whose name a mark or brand stands of record, a similar notice addressed to the person, firm, or corporation at his or its post-office address as shown by the records in the department.

**History:** En. Sec. 5, Ch. 144, L. 1921; re-en. Sec. 3305, R. C. M. 1921; amd. Sec. 94, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "general recorder of marks and brands" in the first sentence; substituted "the department" for "such recorder's office" at the end of the section; and made minor changes in phraseology and punctuation.

**46-609. (3307) Fees for department.** The department shall charge and collect ten dollars (\$10) for recording a new mark or brand, for recording a mark or brand transfer, or for re-recording a mark and brand. The department shall charge one dollar (\$1) for a certified copy of a record and a duplicate certificate. All fees collected shall be paid into the earmarked revenue fund for the use of the department. However, not more

than ten per cent (10%) of the net re-recording fees after all expenses of re-recording are paid, shall be expended in any one (1) year except in case of an emergency declared by the governor.

**History:** En. Sec. 7, Ch. 144, L. 1921; re-en. Sec. 3307, R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1929; amd. Sec. 1, Ch. 109, L. 1949; amd. Sec. 1, Ch. 65, L. 1959; amd. Sec. 90, Ch. 147, L. 1963; amd. Sec. 1, Ch. 13, L. 1969; amd. Sec. 95, Ch. 310, L. 1974.

#### Amendments

The 1963 amendment substituted "the earmarked revenue fund for the use of the livestock commission" for "the livestock commission fund."

The 1969 amendment substituted a fee of \$10.00 for recording or re-recording marks or brands for fees of \$8.00 for recording and \$4.00 for re-recording.

The 1974 amendment substituted "department" for "general recorder of marks and brands" in the first sentence; substituted "the earmarked revenue fund for the use of the department" for "the earmarked revenue fund for the use of the livestock commission" in the third sentence; and made minor changes in phraseology and punctuation.

### 46-610. (3308) Repealed.

#### Repeal

Section 46-610 (Sec. 8, Ch. 114, L. 1921), the repealing clause in the 1921 act, was

repealed by Sec. 201, Ch. 310, Laws of 1974.

## CHAPTER 7—INSPECTORS AND DETECTIVES

Section 46-701. Appointment and powers.

46-703. Duties.

46-704. Compensation.

46-705. District officers, detectives and inspectors.

46-707. Compensation for animals killed.

46-709. Commissioners must designate places for loading livestock for inspection, when.

**46-701. (3309) Appointment and powers.** The department of livestock may appoint stock inspectors and detectives necessary for the protection of the livestock interests of this state. The inspectors and detectives shall take the official oath required by law and shall have similar powers and authority to those conferred by law on deputy sheriffs. However, they are not entitled to the fees or emoluments awarded by law to deputy sheriffs. The board of livestock shall devise an examination for the qualification of stock inspectors and detectives, and the department may appoint and employ only persons who successfully pass such examination. The board shall promulgate administrative rules for the taking of this examination and define a passing grade.

**History:** En. Sec. 2970, Pol. C. 1895; re-en. Sec. 1796, Rev. C. 1907; amd. Sec. 1, Ch. 170, L. 1921; re-en. Sec. 3309, R. C. M. 1921; amd. Sec. 1, Ch. 17, L. 1974; amd. Sec. 96, Ch. 310, L. 1974.

The reference to "the department" in the next to last sentence was inserted by the compiler.

#### Amendments

Chapter 17, Laws of 1974, substituted "board of livestock" for "livestock commission" in the first sentence and added the last two sentences.

Chapter 310, Laws of 1974, substituted "department of livestock" for "livestock commission" in the first sentence and made minor changes in phraseology.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 17 and once by Ch. 310. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

**46-702. (3310) Repealed.****Repeal**

This section (Sec. 2971, Pol. C. 1895), relating to bonds and oaths of stock inspectors and detectives, was repealed by

Sec. 51, Ch. 177, Laws 1965. For new provisions relating to bonds for state officers and employees, see sec. 6-105 et seq.

**46-703. (3311) Duties.** The stock inspectors and detectives shall arrest all persons who in their presence violate the stock laws of this state. Every stock inspector and detective, on information that a person has committed an offense against the laws of this state, in feloniously branding or stealing stock, or an offense against the laws of this state for the protection of the rights and interests of stock owners, must make the necessary affidavit for the arrest and examination of the person, and on a warrant issued for the person, immediately arrest the person and bring him before the proper officer and notify the department of his acts.

**History:** En. Sec. 2972, Pol. C. 1895; re-en. Sec. 1798, Rev. C. 1907; re-en. Sec. 3311, R. C. M. 1921; amd. Sec. 97, Ch. 310, L. 1974.

**Amendments**

The 1974 amendment substituted "department" for "board" near the end of the section and made minor changes in phraseology and punctuation.

**46-704. (3312) Compensation.** The stock inspectors and detectives are under the exclusive control and direction of the department. They must be paid for their services in the amount which the department determines.

**History:** En. Sec. 2973, Pol. C. 1895; re-en. Sec. 1799, Rev. C. 1907; re-en. Sec. 3312, R. C. M. 1921; amd. Sec. 91, Ch. 147, L. 1963; amd. Sec. 98, Ch. 310, L. 1974.

**Amendments**

The 1963 amendment substituted "commission" for "board" in two places.

The 1974 amendment rewrote this section which read: "The stock inspectors and detectives are under the exclusive control and direction of the commission, and must be paid for their services such sums as may be agreed upon by the commission, but in no case must they receive any mileage."

**46-705. (3315) District officers, detectives and inspectors.** The stock inspectors and detectives are district officers, and the department must designate the district in which the inspectors and detectives serve, and the district must be designated in their commissions.

**History:** En. Sec. 2991, Pol. C. 1895; re-en. Sec. 1800, Rev. C. 1907; re-en. Sec. 3313, R. C. M. 1921; amd. Sec. 99, Ch. 310, L. 1974.

**Amendments**

The 1974 amendment substituted "department" for "board."

**46-706. (3314) Brands fraudulently changed.****Immunity from Liability**

Employees of the state livestock commission who, with probable cause, seized and killed animals to establish whether

brand had been altered or defaced are not liable for wrongful conversion. *Johnson v. Furgeson*, 158 M 170, 489 P 2d 1032.

**46-707. (3315) Compensation for animals killed.** The value of the animal taken and killed shall be determined by three disinterested parties living in the vicinity where the animal is seized. The amount of money awarded to the owner is full compensation for the loss of the animal. All money disbursed under this section shall be paid out of the department's



funds in the earmarked revenue fund, and whenever possible the dead bodies of the animals killed shall be disposed of for cash, and the proceeds turned into the fund.

**History:** En. Sec. 1975, Pol. C. 1895; re-en. Sec. 1802, Rev. C. 1907; re-en. Sec. 3315, R. C. M. 1921; amd. Sec. 92, Ch. 147, L. 1963; amd. Sec. 100, Ch. 310, L. 1974.

#### Amendments

The 1963 amendment substituted "livestock commission moneys in the earmarked revenue fund" for "livestock commission fund."

The 1974 amendment substituted "disbursed under this section" for "disbursed as herein provided"; substituted "department's funds in the earmarked revenue fund" for "livestock commission moneys in the earmarked revenue fund"; and made minor changes in phraseology and punctuation.

**46-709. Commissioners must designate places for loading livestock for inspection, when.** The board of county commissioners must, at the request of the department, designate within their respective counties certain convenient places, and provide suitable facilities for unloading and loading of livestock for inspection purposes.

**History:** En. Sec. 1, Ch. 74, L. 1939; amd. Sec. 1, Ch. 211, L. 1947; amd. Sec. 101, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "Montana livestock commission" and made a minor change in punctuation.

## CHAPTER 8—INSPECTION OF LIVESTOCK BEFORE SALE, REMOVAL OR SHIPMENT

Section 46-801. [Transferred.]

46-801.1. Definitions.

46-801.2. Inspection of livestock before change of ownership or removal from county—transportation permits.

46-801.3. Section 46-801.2 does not apply in certain instances.

46-801.4. Inspection for livestock removed from this state.

46-802. Duties of state stock inspectors and deputy stock inspectors—department authorized to adopt rules.

46-803. Seizure of livestock, retention of livestock, sale, disposal of proceeds.

46-804. Fees for inspection and livestock transportation permits.

46-806. Penalties for violations of act.

46-809. Order requiring sheep removal permits—petition by sheep raisers.

46-810. Permit required for removal of sheep after order—violation as misdemeanor.

46-811. Form and issuance of permits—fee.

46-812. Publication of notice of sheep removal permit order.

46-813. Removal of permit requirement.

**46-801. [Transferred.]**

#### Compiler's Notes

Section 102, Ch. 310, Laws of 1974 re-numbered this section as sec. 46-801.2.

**46-801.1. Definitions.** Unless the context requires otherwise, in sections 46-801.2 through 46-806:

(1) "Livestock" means a cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly;

(2) "State stock inspector" means an employee of the department of livestock and designated by the department as a state stock inspector;

(3) "Deputy state stock inspector" means a person designated by the department as a deputy state stock inspector, who does not receive a salary or compensation from the department.

History: En. 46-801.1 by Sec. 103, Ch. 310, L. 1974.

46-801.2. Inspection of livestock before change of ownership or removal from county—transportation permits. (1) Except as otherwise provided in this act, it is unlawful to remove or cause to be removed from a county in this state any livestock, or to transfer ownership by sale or otherwise or for an intended purchaser or his agent to take possession of any such animal subject to title passing upon meeting or satisfaction of any conditions unless the livestock has been inspected for brands by a state stock inspector or deputy state stock inspector, and a certificate of the inspection has been issued in connection with and for the purpose of the transportation or removal or of such change of ownership as provided in this act. The inspection must be made in daylight provided, however, that the change of ownership inspection requirements of this subsection shall not apply when such sale or change of ownership transaction involves five (5) or less such animals.

(2) It is unlawful to sell or offer for sale at a livestock market any livestock originating within any county in this state in which a livestock market is maintained, or transported under a market consignment permit until the livestock has been inspected for marks and brands by a state stock inspector, as provided in this act.

(3) It is unlawful to remove or cause to be removed any livestock from the premises of a livestock market in this state unless the livestock has been inspected for marks and brands by a state stock inspector and an inspection certificate for the livestock has been issued in connection with and for the purpose of the removal from the premises of the livestock market, as provided in this act.

(4) The person in charge of livestock being removed from a county in this state, where inspection thereof is required by this act, or where change of ownership has occurred or when moved under a market consignment permit shall have in his possession the certificate of inspection or market consignment permit issued in connection therewith, and shall exhibit the certificate to any sheriff, deputy sheriff, constable, highway patrolman, state stock inspector or deputy state stock inspector at the request of either of them. Section 46-803 shall be extended to livestock transported or sold under the above-mentioned permits.

(5) The following transportation permits may be issued:

(a) If a saddle, work, or show horse is being transported from county to county in this state by the owner for his personal use or business, or where a purebred cow is being transported from county to county in this state by its owner for show purposes, and where there is no change of ownership, the inspection certificate as required by this act, may be endorsed as to the purpose and extent of transportation by the inspector issuing the certificate in order to serve as a travel permit in this state for a

period not to exceed one (1) year for the horse or cow described thereon. The permit becomes void upon any transfer of ownership or if the horse or cow are to be removed from the state. In such instances an inspection must be secured for removal and the endorsed certificate surrendered.

(b) The owner of a saddle, work, or show horse may apply for a permanent transportation permit valid for both interstate and intrastate transportation of the horse until there is a change of ownership. To obtain a permit a horse must have either a registered brand that has been legally cleared, or a lip tattoo, or the owner must present proof of ownership to a state stock inspector. A written application, on forms to be provided by the department, must be completed by the owner and presented to a state stock inspector together with a five dollar (\$5) permit fee for each horse. The application shall contain a thorough physical description of the horse and list all brands and tattoos carried by the horse.

Upon approval of the application by a state stock inspector, a permanent transportation permit shall be issued by the department to the owner for each horse and such permit shall be valid for the life of the horse. If there is a change of ownership in a horse the permit shall automatically become void. The permit must accompany the horse for which it was issued at all times while the horse is in transit. This permit shall be in lieu of other permits and certificates required under the provisions of this section. The state of Montana shall recognize as valid permanent transportation permits issued in other jurisdictions to the owner of a saddle, work, or show horse subsequently entering the state. Such a permit shall be automatically void upon a change of ownership.

History: En. Sec. 1, Ch. 59, L. 1943; amd. Sec. 1, Ch. 176, L. 1945; amd. Sec. 1, Ch. 210, L. 1947; amd. Sec. 1, Ch. 110, L. 1949; amd. Sec. 1, Ch. 184, L. 1953; amd. Sec. 1, Ch. 142, L. 1957; amd. Sec. 1, Ch. 9, L. 1961; amd. Sec. 1, Ch. 54, L. 1969; amd. Sec. 1, Ch. 149, L. 1971; amd. Sec. 1, Ch. 247, L. 1973; Sec. 46-801, R. C. M. 1947; amd. and redes. 46-801.2 by Sec. 102, Ch. 310, L. 1974.

#### Amendments

The 1969 amendment added subsections (7) and (8) pertaining to the inspection of livestock removed from the state.

The 1974 amendment substituted "livestock" for "cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or

filly" in the first sentences of subsections (1) to (4); inserted "or where a purebred cow is being transported from county to county in this state by its owner for show purposes" in the first sentence of subdivision (5)(a); substituted "horse or cow" for "horse or horses" in two places in subdivision (5)(a); deleted subdivision (5)(c), pertaining to transport of registered purebred cattle by the owner for show purposes; deleted subsection (6), pertaining to exceptions to the requirement for transportation permits (see section 46-801.3); deleted subsections (7) and (8), pertaining to inspection of livestock removed from the state (see section 46-801.4); and made minor changes in phraseology and punctuation.

**46-801.3. Section 46-801.2 does not apply in certain instances. Section 46-801.2 does not apply to:**

(1) Livestock being transported through the state in interstate commerce without leaving the custody of the carrier;

(2) Livestock transported by railroad consigned to and which, without leaving the custody of the carrier, does reach a market at which the department of livestock regularly maintains a stock inspector, and a loading tally has been filed by the shipper with the carrier as provided in section 46-1008;



(3) Livestock when driven on the hoof and not moved by means of any motor vehicle, trailer, horse-drawn vehicle, railroad car or boat, by the owner from one county to the next adjoining county within the state onto land owned or controlled by the owner of livestock so moved for the purpose of pasturing, feeding, or changing the range thereof;

(4) Livestock when driven on the hoof or moved by means of a motor vehicle, trailer, horse-drawn vehicle, railroad car or boat, by the owner from one county to the next adjoining county within this state onto land owned or controlled by the owner of livestock without leaving land owned or controlled by the owner when moved for the purpose of pasturing, feeding, or changing the range thereof;

(5) Livestock when driven on the hoof from one county to an adjoining county within this state for the purpose of shipment by railroad or delivery to a licensed public market by a person who has been the owner of that livestock for a period of at least three (3) months;

(6) Livestock from one county to be consigned to, and which actually reach by means other than railroad, a licensed livestock market located in another county of the state at which the department regularly maintains a stock inspector, and for which a market consignment permit has been obtained in a manner provided by law;

(7) Livestock when hauled by truck or trailer from one county to an adjoining county within the state for the purpose of shipment by railroad at which shipping point the department maintains a stock inspector or where a deputy state stock inspector is available, and for which a transportation permit has been obtained in the manner provided by law.

History: En. 46-801.3 by Sec. 104, Ch. 310, L. 1974.

**46-801.4. Inspection for livestock removed from this state.** Except as provided for in subsections (1) and (2) of section 46-801.3 and subsection (5)(b) of section 46-801.2, nothing contained in this chapter authorizes or permits a person to remove or cause to be removed livestock from this state to a location outside of this state, unless the livestock has been inspected for brands by a state stock inspector or deputy state stock inspector and a certificate for the inspection has been issued in connection with and for the purpose of the transportation or removal as provided in this chapter.

History: En. 46-801.4 by Sec. 105, Ch. 310, L. 1974.

**46-802. Duties of state stock inspectors and deputy stock inspectors—**department authorized to adopt rules. (1) State stock inspectors and deputy state stock inspectors, upon the application of the owner, or the duly authorized agent of the owner of livestock, shall inspect the livestock which are intended for sale, removal or shipment and issue his certificate of inspection therefor, if it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to the possession thereof.

(2) The inspection shall include an examination of the livestock and all marks and brands thereon to identify the livestock. The certificate of inspection shall be made in triplicate and shall specify the date of inspection, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock or of the applicant for inspection, and the purchaser or transferee, if applicable, the class of the animal, the marks and brands, if any, upon the animal, and any other information and upon the form of certificate as the department may from time to time require. One (1) copy of the certificate shall be retained by the inspector, one (1) copy shall be furnished by the inspector to the owner or shipper of the livestock, and one (1) copy shall be filed by the inspector with the department within five (5) days.

If it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to the possession thereof, the state stock inspectors or deputy state stock inspectors or any sheriff or deputy sheriff, upon application of an owner or his agent of the livestock to be consigned and delivered directly to a licensed livestock market located in another county of the state, or delivered directly to a shipping point duly approved by the department where a livestock inspector is available for inspection, in an adjoining county, shall issue to the person a separate market consignment permit or transportation permit for each owner when the owner, or owners, or their duly authorized agents sign the permit certifying the brands, description and destination of the livestock. The market consignment permit or transportation permit shall be made in triplicate, shall specify the date and time issued, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock and the name and address of the person actually transporting the livestock if different than the owner, the kind of livestock, the marks and brands, if any, upon the livestock, a description of the vehicle or vehicles to be used to transport the livestock to include the license number of the vehicles and any other information and upon the form of permit as the department may from time to time require. Any permit so issued shall be good for shipment within thirty-six (36) hours from date and time of issue, however, permits not used within this time limitation must be returned to the issuing officer to be canceled and to release the permittee from performance. One (1) copy of the permit shall be retained by the inspector or sheriff's office, one (1) copy shall be filed by the inspector or sheriff's office with the department within five (5) days of the date of issue, and one (1) copy shall be furnished by the inspector or sheriff's office to the owner or shipper of the livestock which copy of the permit shall accompany the shipment and be delivered to the state stock inspector at the livestock market or shipping point where the livestock is delivered.

The department may adopt rules necessary to carry out this act.

**History:** En. Sec. 2, Ch. 59, L. 1943; amd. Sec. 2, Ch. 184, L. 1953; amd. Sec. 2, Ch. 142, L. 1957; amd. Sec. 1, Ch. 35, L. 1969; amd. Sec. 2, Ch. 149, L. 1971; amd. Sec. 2, Ch. 247, L. 1973; amd. Sec. 106, Ch. 310, L. 1974.

#### **Amendments**

The 1969 amendment inserted "duly approved \* \* \* available for inspection" after "shipping point" in the third paragraph and added the last paragraph.

The 1971 amendment inserted "sale to a feeder purchaser" in the first paragraph;

and inserted "and the purchaser or transferee, if applicable" in the second sentence of the second paragraph.

The 1973 amendment deleted "to a feeder purchaser" after "intended for sale" in the first paragraph.

The 1974 amendment inserted the numerical subsection designations at the beginning of the paragraphs; substituted "department" for "Montana livestock com-

mission," "livestock commission," and "secretary of the livestock commission at Helena, Montana" in the caption and throughout the section; substituted "livestock" for "animal referred to in section 46-801," "animals," "animal or animals," etc. throughout the section; and made minor changes in phraseology and punctuation.

**46-803. Seizure of livestock, retention of livestock, sale, disposal of proceeds.** (1) All state stock inspectors inspecting any livestock, either before or after shipment or removal from any county in this state, or upon a change of ownership, may inspect and seize either at the point of sale, shipment, or destination or en route any livestock, or proceeds thereof, which the inspector believes is stolen, or upon which brands have been altered or obliterated, or which does not conform to the description contained on the tally sheet furnished by the shipper thereof or to the description contained in any certificate of inspection issued before shipment or removal of the livestock.

(2) Upon taking possession of livestock under this act, a state stock inspector may retain the livestock in his possession for fifteen (15) days to make further investigation relative to its ownership. A state stock inspector may either at once or at any time within fifteen (15) days, sell the livestock at a licensed livestock market, or in the open market, for the best available price and remit the proceeds, less the cost of keeping and sale, to the department together with a full description of the livestock sold, giving marks and brand, if any, and a statement of the reason for the seizure and sale. The proceeds shall be deposited by the department with the state treasurer and credited to the department fund, where it is subject to claim by the owner of the livestock in the same manner and for the same length of time as is provided by law for the making of claims for moneys arising from the sale of stray stock.

**History:** En. Sec. 3, Ch. 59, L. 1943; amd. Sec. 108, Ch. 147, L. 1963; amd. Sec. 3, Ch. 149, L. 1971; amd. Sec. 3, Ch. 247, L. 1973; amd. Sec. 107, Ch. 310, L. 1974.

#### Amendments

The 1963 amendment substituted "agency fund" for "stock estray fund" in the last sentence of the second paragraph; and substituted "for moneys arising from the sale of stray stock" for "against said fund" at the end of the section.

The 1971 amendment inserted "or upon a change of ownership, to a feeder purchaser" in the first paragraph; and inserted "sale" before "shipment or destination" in the first paragraph.

The 1973 amendment deleted "to a feeder purchaser" following "a change of ownership" in the first paragraph.

The 1974 amendment inserted the numerical subsection designations at the beginning of the paragraphs; substituted "department" for "livestock commission" in two places in subsection (2); substituted "department fund" for "agency" in the last sentence of subsection (2); and made minor changes in phraseology and punctuation.

#### Liability of Inspectors

Employees of the state livestock commission who, with probable cause, seized and killed animals to establish whether brand had been altered or defaced, were simply following their duty under this section and cannot be sued for wrongful conversion. *Johnson v. Furgeson*, 158 M 170, 489 P 2d 1032.

**46-804. Fees for inspection and livestock transportation permits.** (1) For the service of inspection before removal from a county, or before



change of ownership, the inspector making the inspections shall receive twenty-five cents (\$.25) per head for twelve (12) head or less, or three dollars (\$3) for from twelve (12) head to twenty (20) head and shall receive twenty cents (\$.20) per head for each head over twenty (20) head. For the issuance of a market consignment permit or transportation permit (other than a permanent permit) before removal from a county, the inspector, sheriff or deputy sheriff issuing the permits shall receive twenty-five cents (\$.25) for each permit issued for twelve (12) head or less; fifty cents (\$.50) for each permit for twelve (12) to thirty (30) head and one dollar (\$1) for each permit issued for over thirty (30) head and shall receive in addition his necessary actual expenses, to be paid by the owner or the person for whom the inspection is made or permit issued. For the issuance of a permanent horse transportation permit, the state stock inspector taking the application for permit shall receive five dollars (\$5) per head for each permit issued. All inspection and permit fees and expenses shall be collected by the inspector, sheriff, or deputy sheriff at the time of inspection or issuance of permit and all the fees and expenses collected by a deputy state stock inspector, sheriff or deputy sheriff shall be retained by him and all such fees and expenses collected by a state stock inspector shall be sent by him to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department.

(2) For the service of inspection before livestock is sold or offered for sale at a licensed public market, a state stock inspector making the inspection shall receive twenty cents (\$.20) per head for an animal originating within the county in the state in which the market is maintained, or transported under a market consignment permit, and ten cents (\$.10) per head for an animal previously inspected before removal from a county as herein provided. All fees shall be paid by the owner or by the person for whom the inspection is made. For inspecting an animal before it is removed from the premises of a licensed public market the state stock inspector making the inspection shall receive ten cents (\$.10) per head from the owner or the person for whom the inspection is made. All fees for inspection at the market shall be collected by the state stock inspector making the inspection at the time the inspection is made and shall be sent by him to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department.

(3) All inspection fees and expenses shall be paid to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department. State stock inspectors shall be paid for their services and receive their expenses as fixed by the department.

**History:** En. Sec. 4, Ch. 59, L. 1943; amd. Sec. 1, Ch. 106, L. 1949; amd. Sec. 3, Ch. 184, L. 1953; amd. Sec. 3, Ch. 142, L. 1957; amd. Sec. 93, Ch. 147, L. 1963; amd. Sec. 4, Ch. 149, L. 1971; amd. Sec. 4, Ch. 247, L. 1973; amd. Sec. 108, Ch. 310, L. 1974.

#### Amendments

The 1963 amendment substituted references to "the earmarked revenue fund

for the use of the livestock commission" throughout the section for "the livestock commission fund."

The 1971 amendment inserted "or before change of ownership to a feeder purchaser" in the first sentence of subsection (a).

The 1973 amendment deleted "to a feeder purchaser" after "change of ownership" in the first sentence of subsection (a); reduced the maximum number in-

spected for a \$3 fee from thirty to twenty head in subsection (a); increased the fee from 10 cents to 20 cents per head for each head over twenty in subsection (a); inserted "(other than a permanent permit)" in the second sentence of subsection (a); and inserted the provision for issuance of a permanent horse transportation permit in subsection (a).

The 1974 amendment changed the subsection designations from small letters to numerals; substituted references to "department" throughout the section for references to "livestock commission"; substituted references to "the earmarked

revenue fund for the use of the department" throughout the section for references to "the earmarked revenue fund for the use of the livestock commission"; deleted a policy declaration at the beginning of subsection (3); substituted "receive their expenses as fixed by the department" for "receive for their expenses only such sums as shall be agreed upon by the livestock commission of the state of Montana and fixed and determined by the state board of examiners" at the end of subsection (3); and made minor changes in phraseology and punctuation.

#### 46-805. Repealed.

##### Repeal

Section 46-805 (Sec. 5, Ch. 59, L. 1943), defining state stock inspector and deputy

state stock inspector, was repealed by Sec. 201, Ch. 310, Laws of 1974. For present definitions, see section 46-801.1.

**46-806. Penalties for violations of act.** (1) A person who removes or causes to be removed from a county in this state, livestock (a) without having the livestock inspected before removal where an inspection is required by law; (b) without obtaining a market consignment permit or transportation permit, where the permits are obtainable by law; (c) and does obtain a market consignment permit for livestock but does not deliver the livestock transported thereunder to the livestock market designated in the market consignment permit; (d) and does obtain a transportation permit for the livestock but does not deliver the livestock transported thereunder to the destination as shown on the transportation permit and fails to have the livestock so transported inspected at the point of destination or does not file a loading tally with the carrier as provided in section 46-1008; is guilty of a misdemeanor and shall be punishable as provided in subsection (6) of this section.

(2) A person who sells or offers for sale at a livestock market, or removes or causes to be removed from a livestock market, livestock without having the livestock inspected is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

(3) A person who ships by railroad carrier, and the railroad carrier transporting, livestock for which a loading tally has been filed as provided by section 46-1008 and for which shipment of livestock an inspection has not been made, and after shipment, causes or permits the livestock to leave the custody of the railroad carrier at a place other than where this state regularly maintains a stock inspector, is guilty of a misdemeanor and shall be punishable as provided in subsection (6) of this section.

(4) A person who has in his charge livestock being removed from a county in the state, and for which an inspection certificate or a market consignment permit has been issued, and fails to have in his possession accompanying the livestock the inspection certificate or market consignment permit as issued for the livestock; or who, having the certificate of inspection or market consignment permit, fails to exhibit them to a sheriff, deputy sheriff, constable, highway patrolman, state stock inspec-

tor or deputy state stock inspector at their request, is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

(5) A person violating any of the provisions of this act is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

(6) Upon conviction of a person, firm, association, or corporation under this act, they shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) or imprisoned in the county jail for a period of not more than six (6) months, or both fined and imprisoned. Of all fines assessed and collected under this act, fifty per cent (50%) thereof shall be paid into the state treasury and credited to the earmarked revenue fund for the use of the department, and fifty per cent (50%) thereof shall be paid into the general fund of the county in which the conviction occurred.

**History:** En. Sec. 6, Ch. 59, L. 1943; amd. Sec. 4, Ch. 184, L. 1953; amd. Sec. 4, Ch. 142, L. 1957; amd. Sec. 94, Ch. 147, L. 1963; amd. Sec. 109, Ch. 310, L. 1974.

#### Amendments

The 1963 amendment substituted "the earmarked revenue fund for the use of the livestock commission" for "the livestock commission fund" in subsection (b).

The 1974 amendment changed the subsection designations from small letters to numerals; substituted small letters for numerals in the designations of items in

subsection (1); substituted references to "livestock" for references to "animal or animals of the class referred to in section 46-801" and "animal or animals" throughout the section; substituted "provided in subsection (6) of this section" for "hereinafter provided" at the end of subsections (1) to (5); substituted "the earmarked revenue fund for use of the department" for "the earmarked revenue fund for the use of the livestock commission" in subsection (6); and made minor changes in phraseology and punctuation.

### 46-807. Repealed.

#### Repeal

Section 46-807 (Sec. 7, Ch. 59, L. 1943), relating to the continuance of actions

pending on the effective date of Ch. 59, Laws of 1943, was repealed by Sec. 201, Ch. 310, Laws of 1974.

**46-809. Order requiring sheep removal permits—petition by sheep raisers.** The department shall, within sixty (60) days of the filing of a petition signed by not less than fifty-one per cent (51%) of the sheep raisers owning not less than fifty-one per cent (51%) of the sheep in a county of this state requesting such action, make an order requiring a permit for the removal of any sheep from the county.

**History:** En. Sec. 1, Ch. 135, L. 1963; amd. Sec. 110, Ch. 310, L. 1974.

#### Title of Act

An act to authorize the Montana livestock commission, upon petition of fifty-one per cent (51%) of the sheep raisers owning fifty-one per cent (51%) of the sheep in any county of the state, to require a permit for the removal of sheep from such county; providing for the

form and issuance of such permits; providing that it shall be a misdemeanor to remove sheep from such a county without a permit; and providing for the manner of removing the requirement for such a permit.

#### Amendments

The 1974 amendment substituted "department" for "livestock commission" and made minor changes in phraseology.

**46-810. Permit required for removal of sheep after order—violation as misdemeanor.** Effective on the date of the department's order which requires a permit for the removal of sheep from a county, it is unlawful for



a person to remove sheep from the county without a permit. A person who removes, authorizes, or assists in the removal of sheep from the county without a permit is guilty of a misdemeanor.

**History:** En. Sec. 2, Ch. 135, L. 1963; amd. Sec. 111, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment's order" for "order of the livestock commission" and made minor changes in phraseology and punctuation.

**46-811. Form and issuance of permits—fee.** Before making an order under this act, the department must provide for the form of the permit and for issuance of the permits by livestock inspectors in the affected county. Fee for issuance of the permit is fifty cents (\$.50).

**History:** En. Sec. 3, Ch. 135, L. 1963; amd. Sec. 112, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "livestock commission" and made minor changes in phraseology.

**46-812. Publication of notice of sheep removal permit order.** Before the effective date of an order made under this act, the department must publish a notice containing the text and effective date of the order at least three (3) times in a paper of general circulation in the county and must have a copy of the order mailed to every sheep raiser in the county.

**History:** En. Sec. 4, Ch. 135, L. 1963; amd. Sec. 113, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "commission" and made minor changes in phraseology.

**46-813. Removal of permit requirement.** On receipt of a petition signed in the manner specified in section 46-809, requesting the removal of the permit requirement, the department shall, at its next meeting, order the permit requirement removed.

**History:** En. Sec. 5, Ch. 135, L. 1963; amd. Sec. 114, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "sec-

tion 46-809" for "section 1 of this act"; substituted "department" for "livestock commission"; and made minor changes in phraseology.

## CHAPTER 9—LIVESTOCK MARKETS—INSPECTION AND QUARANTINE —LICENSE AND BONDING

- Section 46-902. Inspection of public markets.
- 46-903. Quarantine of diseased animals—ownership of animals to be determined—proceeds from sale of stock of unknown owner.
- 46-904. State treasurer to hold proceeds of sales of stray stock.
- 46-906. Definitions.
- 46-907. Regulation of livestock markets.
- 46-908. Certificate to operate livestock market required—application, contents of—fee.
- 46-909. Hearing and procedure—limitation upon issuance of certificates.
- 46-910. Livestock markets licensed—grounds of discontinuance.
- 46-911. License fee.
- 46-912. Bond required—conditions.
- 46-913. Records kept by licensees.
- 46-914. Rules—board to adopt.
- 46-915. Cancellation or suspension of certificates—grounds.
- 46-916. Investigation of actions of licensees—hearing of complaints—additional powers and duties of members of board or agents—witnesses.

- 46-917. Appeal by licensee or applicant for certificate—bond—procedure.
- 46-918. Operator of market to warrant title of livestock sold—other duties.
- 46-918.1. Operator of market to issue a receipt for livestock consigned.
- 46-920. Penalties for violating act.

**46-901. (3328) Public markets—record books of sales of livestock.**

**References**

Application of Baker Sales Barn, Inc.,  
140 M 1, 367 P 2d 775, 778.

**46-902. (3329) Inspection of public markets.** Livestock inspectors, which include stock inspectors of a county or district, the sheriff of a county, or a representative of the department of livestock, may enter upon the premises where livestock is being held or sold, and be accorded every facility by the owners thereof in determining whether a violation of the law is being made, or is likely to be made, by a person, association, or corporation. The inspection may not unnecessarily interfere with the conduct of the sales. Livestock so sold at the market may not be delivered to the purchaser until he has first received an inspection certificate, issued by one of the officers designated in this section, for the inspection of the livestock, showing clearly and explicitly that the person making the inspection is satisfied as to the ownership of the livestock and the health of all livestock so sold.

**History:** En. Sec. 2, Ch. 96, L. 1907; Sec. 1816, Rev. C. 1907; re-en. Sec. 3329, R. C. M. 1921; amd. Sec. 115, Ch. 310, L. 1974.

**Amendments**

The 1974 amendment substituted "department of livestock" for "livestock commission" in the first sentence and made minor changes in phraseology and punctuation.

**46-903. (3330) Quarantine of diseased animals—ownership of animals to be determined—proceeds from sale of stock of unknown owner.** If the livestock inspector at a sale find any livestock afflicted with an infectious or contagious disease, he shall immediately take possession of the livestock and place them in quarantine, to be disposed of as directed by the department. If there is any question respecting the ownership of livestock sold, the livestock inspector may take possession of the livestock. The livestock inspector shall notify the person in charge of the market and conducting the sales, and the person who has purchased the livestock at the sale, within a reasonable time. Where livestock is sold, the ownership of which is not known or cannot be determined by the livestock inspector, they may be sold as strays, and the net proceeds derived from the sale shall be sent to the department to be held and kept, together with a complete description of the livestock, and the brands of the livestock. The money shall be held and retained by the department for the use and benefit of the owner of the livestock, and paid to the owner when ownership has been satisfactorily determined. If the proceeds of the sale sent to the department are not claimed by the lawful owner of the livestock within two (2) years from the date of the receipt of the proceeds the money shall be held and disposed of as provided in section 46-904.

**History:** En. Sec. 3, Ch. 96, L. 1907; R. C. M. 1921; amd. Sec. 116, Ch. 310, Sec. 1817, Rev. C. 1907; re-en. Sec. 3330, L. 1974.

**Amendments**

The 1974 amendment substituted references to "department" throughout the section for references to "state veterinary surgeon," "livestock commission of the state of Montana, at Helena, Montana,"

"commission," and "livestock commission"; substituted "as provided in section 46-904" for "as hereinafter provided" at the end of the section; and made minor changes in phraseology and punctuation.

**46-904. (3331) State treasurer to hold proceeds of sales of stray stock.**

When this law has been fully complied with, and the money paid into the state treasury, two (2) years after its receipt from the department, the state treasurer shall hold the money in the department fund and his books shall show all information with respect to the sale and proceeds from each head, in accordance with the published yearly report of the department. The money shall be held by the state treasurer for the use and benefit of the rightful owner and claimant of the money for the period of one (1) year, after which it becomes state property and shall be placed to the credit of the earmarked revenue fund for the use of the department.

**History:** En. Sec. 4, Ch. 96, L. 1907; Sec. 1818, Rev. C. 1907; re-en. Sec. 3331, R. C. M. 1921; amd. Sec. 106, Ch. 147, L. 1963; amd. Sec. 117, Ch. 310, L. 1974.

**Amendments**

The 1963 amendment substituted "the agency fund" for "a separate fund, to be known and designated as the 'stray stock fund'"; and substituted "earmarked rev-

enue fund for the use of the livestock commission" for "livestock commission fund" at the end of the section.

The 1974 amendment substituted references to "department" throughout the section for references to "state livestock commission" and "livestock commission"; substituted "the department fund" for "the agency fund"; and made minor changes in phraseology and punctuation.

**46-906. Definitions.** Unless the context requires otherwise, in this act:

(1) "Livestock" means and includes horses, mules, cattle, swine, sheep and goats;

(2) "Person" means a person, copartnership, association or corporation;

(3) "Board" means the board of livestock provided for in section 82A-1303;

(4) "Certificate" means the certificate of public convenience and necessity authorized to be issued under this act;

(5) "Commission basis" means the compensation or charge imposed on the owner of livestock for the services rendered the owner by the operator of the livestock market;

(6) "Livestock market" means a place where a person assembles livestock for either private or public sale by him and the service is compensated for by the owner, on a commission basis or otherwise, except: (a) A place used solely for a dispersal sale of the livestock of a farmer, dairyman, livestock breeder, or feeder who is discontinuing business and no other livestock is sold there or offered for sale; (b) A farm, ranch, or place where livestock either raised or kept thereon for the grazing season or for fattening is sold, and no other livestock is brought there for sale or offered for sale; (c) The premises of a butcher, packer, or processor who received animals exclusively for immediate slaughter; (d) The premises of a person engaged in the raising of livestock for breeding purposes



only, who limits his sale to livestock of his own production; (e) A place where a breeder or an association of breeders of livestock of any class assemble and offer for sale and sell under his or their own management any livestock, when the breeder or association of breeders assumes all responsibility for the sale and the title of livestock sold.

**History:** En. Sec. 1, Ch. 193, L. 1945; amd. Sec. 118, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment changed the subdivision designations from small letters to numerals; deleted definitions of "com-

mission," "livestock commission," "sanitary board"; inserted the definition of "Board" in subdivision (3); substituted small letters for numerals as the designations of items in subdivision (6); and made minor changes in phraseology and punctuation.

**46-907. Regulation of livestock markets.** The board shall: (1) Supervise and regulate livestock markets in this state; (2) regulate the properties, facilities, operations, services and practices of all livestock markets; (3) supervise and regulate livestock markets in all matters affecting the relationship between the operators and owners of livestock, and between the operators and purchasers of livestock, at the markets; (4) prescribe by general order, or otherwise, rules in conformity with this act applicable to all livestock markets, and not in conflict with the laws of the United States or rules and regulations of the United States department of agriculture or other federal agencies.

**History:** En. Sec. 2, Ch. 193, L. 1945; amd. Sec. 119, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "The board shall" for "The livestock commission and sanitary board of the state of Montana is hereby vested with power and authority, and it is hereby made its duty" at the beginning of the section; substituted numerals for small letters in the des-

ignations of the items of the section; and made minor changes in phraseology.

#### Powers of Livestock Commission

The discretionary power of the livestock commission to determine whether or not a showing of convenience and necessity has been made by applicant for certificate to operate a livestock market is limited by section 46-909. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

**46-908. Certificate to operate livestock market required—application, contents of—fee.** A person may not operate a livestock market in this state without first obtaining from the board, under this act, a certificate declaring that public convenience and necessity require the operation. A person making application for a certificate shall do so in writing, verified by the applicant, and specifying the following:

- (1) The name and address of the applicant, and the names and addresses of its officers, if any;
- (2) The place where the applicant proposes to operate a livestock market;
- (3) A complete and detailed description of the property and facilities proposed to be used in connection with the livestock market;
- (4) The commissions or charges applicant proposes to impose on the owners of livestock for services rendered to them by applicant in the operation of the livestock market;
- (5) A detailed statement showing the assets and liabilities of the applicant;

(6) The location of other livestock markets within a radius of two hundred (200) miles of the proposed livestock market, and the names and addresses of the operators thereof;

(7) A detailed statement of the facts upon which the applicant relies showing public convenience and necessity for the livestock market, including the anticipated revenue from inspection fees that may be derived therefrom by this state;

(8) Any additional information the board may require;

(9) The application shall be accompanied by a fee of one hundred dollars (\$100), which shall also be considered the first annual fee if the application is granted, however, the annual fee shall be paid on the following May 1 and each year thereafter, as provided herein.

**History:** En. Sec. 3, Ch. 193, L. 1945;  
amd. Sec. 120, Ch. 310, L. 1974.

#### **Governmental Licensing**

Livestock markets are proper subjects for governmental licensing on the basis of convenience and necessity. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 779. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

#### **Amendments**

The 1974 amendment substituted "board" for "commission" in the introductory paragraph and in subdivision (8) and made minor changes in phraseology and punctuation.

**46-909. Hearing and procedure—limitation upon issuance of certificates.** (1) Upon the filing of the application, the board shall fix a time and place for a hearing thereon, which shall not be less than ten (10) days after the filing. The board shall have a copy of the application and notice of hearing thereon served by mail upon: (a) the operators of any other livestock markets that in the opinion of the board might be affected by the granting of any such certificate; (b) the secretaries of the Montana stockgrowers association and the Montana woolgrowers association; (c) the secretary of the district livestock association, if any; and, (d) the secretary of the livestock association or associations, if any, at the place or within the vicinity of the proposed livestock market, if known to the board; and, (e) upon any railroad company operating into or through any town or city in which the proposed livestock market will be located, at least ten (10) days before the date of hearing.

(2) If, after hearing upon the application, the board finds from the evidence that public convenience and necessity require the authorization of the proposed livestock market, a certificate therefor shall be issued to the applicant. In determining whether public convenience and necessity require the livestock market, the board shall give reasonable consideration to the service rendered by other existing livestock markets in this state and the effect upon them if the proposed livestock market is authorized, and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout twelve (12) months of the year. The board may not authorize the proposed livestock market unless it appears from the evidence submitted at the hearing that the minimum revenue derived by the state from inspection fees shall be equal to seventy-five per cent (75%) of the cost to the state in maintaining a resident livestock inspector and an office for him at the proposed livestock market, and the cost of maintaining at the office of a sufficient record of the re-

corded livestock brands and marks in the state; however, the board may authorize the proposed livestock market if the operator of the proposed market shall, by bond approved by the board guarantee the payment of the minimum revenue.

**History:** En. Sec. 4, Ch. 193, L. 1945; amd. Sec. 121, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment inserted the numerical subsection designations at the beginning of the paragraphs; substituted references to "board" throughout the section for references to "commission"; and made minor changes in phraseology and punctuation.

#### Discretionary Power of Commission

This section limits the discretionary power of the livestock commission to determine whether or not a showing of convenience and necessity has been made by applicant for certificate to operate a livestock market. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

#### Sufficiency of Evidence

In a proceeding to obtain a certificate of public convenience and necessity for operation of a livestock market, evidence may be introduced pertaining to markets outside of Montana but it has effect only so far as the effects on existing markets in the state are concerned. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 782. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

Refusal of certificate of public convenience and necessity for operation of a livestock market was justified where evidence of the applicants showed only convenience as to distances, desirability for community and a border-line market economically. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 781. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

**46-910. Livestock markets licensed—grounds of discontinuance.** If after a hearing in the manner provided in this act it appears to the board that a livestock market licensed under this act has, for a period of two (2) successive years, failed to provide the minimum revenue to the state as provided in this act, the livestock market may be discontinued by order of the board.

**History:** En. Sec. 5, Ch. 193, L. 1945; amd. Sec. 122, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "board" for "commission" in two places and made minor changes in phraseology.

**46-911. License fee.** A person operating a livestock market in this state shall pay on May 1, annually, a license fee of one hundred dollars (\$100) to the board. All fees under this act shall be paid into the state treasury, and placed by the state treasurer to the credit of the earmarked revenue fund for the use of the board.

**History:** En. Sec. 6, Ch. 193, L. 1945; amd. Sec. 95, Ch. 147, L. 1963; amd. Sec. 123, Ch. 310, L. 1974.

#### Amendments

The 1963 amendment substituted "the earmarked revenue fund for use of the

livestock commission" for "the livestock commission fund" at the end of the section.

The 1974 amendment substituted "board" for "livestock commission" in two places and made minor changes in phraseology.

**46-912. Bond required—conditions.** Every person operating a livestock market in this state shall provide a bond in favor of this state, upon a form and with surety to be approved by the board, in the minimum penal sum of ten thousand dollars (\$10,000) or such greater sum as the board may determine, conditioned upon: (1) the payment immediately upon the sale of the livestock of all money received, less reasonable expenses and commissions, by the licensee and operator of the livestock market to the



rightful owner of livestock so consigned and delivered to the licensee for sale; (2) the payment of the minimum fees as provided by section 46-909; and, (3) a full compliance with this act, including all rules adopted under this act. When approved the bond shall be filed with the board. Actions of law may be brought in the name of the state upon the bond for the use and benefit of a person who suffers loss or damage from violations thereof, and may be brought by the person suffering loss or damage in the county of his residence.

**History:** En. Sec. 7, Ch. 193, L. 1945; amd. Sec. 124, Ch. 310, L. 1974.

**Amendments**

The 1974 amendment substituted refer-

ences to "board" for references to "commission" and "secretary of the livestock commission" throughout the section and made minor changes in phraseology and punctuation.

**46-913. Records kept by licensees.** Each licensee shall keep accounts, records, and memoranda, and shall make reports, which the board requires, and the board and its authorized agents and employees shall at all times have access to the accounts, records, and memoranda for inspection and examination.

**History:** En. Sec. 8, Ch. 193, L. 1945; amd. Sec. 125, Ch. 310, L. 1974.

**Amendments**

The 1974 amendment substituted "board"

for "commission" in two places and made minor changes in phraseology and punctuation.

**46-914. Rules—board to adopt.** The board shall adopt and enforce rules it considers necessary or advisable, in the interest of livestock health or public health.

**History:** En. Sec. 9, Ch. 193, L. 1945; amd. Sec. 126, Ch. 310, L. 1974.

**Amendments**

The 1974 amendment rewrote this section which read: "The Montana livestock sanitary board shall adopt and enforce

such rules and regulations as it may deem necessary or advisable, in the interest of livestock health or public health and such rules and regulations shall have the same force and effect as those adopted by the commission."

**46-915. Cancellation or suspension of certificates—grounds.** Finding by the board that a licensee: (a) has been guilty of fraud or misrepresentation as to the titles, charges, number, brands, weights, proceeds of sale, or ownership of livestock; (b) has violated any of the provisions of this act; (c) has violated any of the rules adopted and published by the board; (d) has violated sections 46-801 through 46-806; or, (e) has violated any of the conditions of the bond, as provided by this act, is sufficient cause for the cancellation or suspension of the certificate of the offending operator of the livestock market.

**History:** En. Sec. 10, Ch. 193, L. 1945; amd. Sec. 127, Ch. 310, L. 1974.

**Amendments**

The 1974 amendment substituted "board"

for "commission" in the introductory clause; substituted "sections 46-801 through 46-806" for "sections 46-801 to 46-807" in item (d); and made minor changes in phraseology and punctuation.

**46-916. Investigation of actions of licensees—hearing of complaints—additional powers and duties of members of board or agents—witnesses.** (1) The board or any member or agent of the board, may upon a motion,

or upon a verified complaint in writing of a person, when considered necessary, investigate the actions of a licensee, and if found proper to do so, shall file a complaint against the licensee with the board. The complaint shall be set for hearing before the board upon ten (10) days' notice served upon the licensee.

(2) Any investigation, inquiry or hearing which the board may undertake or hold, under this act, may be undertaken or held by or before any board member or by or before any agent or examiner of the board designated for that purpose by the board. A finding, order, or decision made by a board member or agent or examiner of the board so designated, pursuant to the investigation, inquiry, or hearing when approved and confirmed by the board and ordered filed in its office, is considered the finding, order, or decision of the board. An agent or examiner of the board may administer oaths, examine witnesses, and receive evidence.

**History:** En. Sec. 11, Ch. 193, L. 1945; amd. Sec. 128, Ch. 310, L. 1974.

throughout the section for references to "commission"; deleted former subsection (2), pertaining to powers of members of the commission, sanitary board or the secretaries thereof to administer oaths and issue process and to the payment of witness fees; designated former subsection (3) as subsection (2); and made minor changes in phraseology and punctuation.

#### Amendments

The 1974 amendment substituted "The board or any member or agent of the board" for "the commission, sanitary board or any member or the secretaries thereof" at the beginning of subsection (1); substituted references to "board"

**46-917. Appeal by licensee or applicant for certificate—bond—procedure.** An appeal of a decision of the board for refusing to grant an application for a certificate or suspending or revoking a certificate of a licensee shall be taken to the district court of the county in which the proposed livestock market is to be located or in which the licensee has his principal place of business. The appellant shall file a bond with the clerk of the district court in the sum of three hundred dollars (\$300) to be approved by the judge of the court, conditioned to pay all costs that may be awarded against the appellant in the event of an adverse decision or the decision of the board being affirmed. The cost of preparing transcripts shall be paid by appellant. In case of suspension or revocation of a certificate the filing of the notice and bond shall stay the order of the board until the final determination of the appeal. If the appellant fails to perfect his appeal the stay shall automatically terminate.

**History:** En. Sec. 12, Ch. 193, L. 1945; amd. Sec. 1, Ch. 231, L. 1947; amd. Sec. 129, Ch. 310, L. 1974.

provision for appeal from judgment of the district court to the supreme court; and made minor changes in phraseology and punctuation.

#### Amendments

The 1974 amendment substituted "board" for "commission"; deleted a policy statement of the legislative assembly that "appeals should be heard solely upon the record of the proceedings before the commission in the matter in which the appeal is taken"; deleted a provision pertaining to notice of appeal; deleted a provision requiring the appellant to file with the court a transcript of the testimony and proof; deleted provisions pertaining to the trial before the district court; deleted a

#### Review by District Court

On review provided in the district court under this section it is the duty of the court to examine the records made before the livestock commission to determine whether the commission acted "capriciously, arbitrarily, or abused its discretion and whether it acted according to law." Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

**46-918. Operator of market to warrant title of livestock sold—other duties.** The operator of each livestock market in this state shall warrant to the purchaser thereof the title of all livestock sold through his livestock market and shall be liable to the rightful owner thereof for the net proceeds in cash received for the livestock so sold. An operator of a livestock market shall, when notified by the authorized brand inspector, that there is a question as to whether any designated livestock sold through the market is lawfully owned by the consignor thereof, hold the proceeds received from the sale of the livestock for a reasonable time not to exceed thirty (30) days, to permit the consignor to establish ownership. If at the expiration of that time, the consignor fails to establish his lawful ownership to the livestock, the proceeds shall be transmitted by the operator of a livestock market to the board. The board may dispose of the proceeds in accordance with chapter 10 of this title, relating to the distribution of estray money, and the board's receipt therefor shall relieve the operator of a livestock market from further responsibility for the proceeds. Proof of ownership and account of all sales of livestock shall be transmitted by the authorized brand inspector to the board.

**History:** En. Sec. 13, Ch. 193, L. 1945; amd. Sec. 130, Ch. 310, L. 1974.

**Amendments**

The 1974 amendment substituted refer-

ences to "board" throughout the section for references to "secretary of the livestock commission" and to "secretary" and made minor changes in phraseology and punctuation.

**46-918.1. Operator of market to issue a receipt for livestock consigned.** A person operating a livestock market as defined by section 46-906 which must have a certificate issued by the board according to section 46-908, shall issue a receipt to any person, firm, partnership, or corporation selling livestock through a livestock market showing the number and description of livestock he has consigned for sale.

**History:** En. Sec. 1, Ch. 34, L. 1969; amd. Sec. 131, Ch. 310, L. 1974.

**Title of Act**

An act requiring any person who operates a livestock market and obtains a certificate issued by the livestock commission according to section 46-908, R. C. M. 1947, to issue a receipt to any person, firm,

partnership, or corporation selling livestock through a livestock market showing the number of livestock he has consigned.

**Amendments**

The 1974 amendment substituted "board" for "Montana livestock commission" and made minor changes in phraseology.

**46-920. Penalties for violating act.** A person who violates any provisions of this act or rules adopted by the board under this act, is guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than six hundred dollars (\$600), or imprisoned in the county jail not less than thirty (30) days nor more than six (6) months, or both fined and imprisoned. A person who has been convicted of a violation of this act and who subsequently is found guilty of a violation of this act shall be fined not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000), or imprisoned in the county jail for not less than three (3) months nor more than six (6) months, or both fined and imprisoned. A second conviction requires the board to suspend or cancel the certificate of the person without a hearing,



and the person may not again be granted a certificate for a period of one (1) year.

History: En. Sec. 15, Ch. 193, L. 1945; amd. Sec. 132, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "board"

for "commission or the sanitary board" in the first sentence; substituted "board" for "commission" in the last sentence; and made changes in phraseology and punctuation.

### CHAPTER 10—ESTRAYS—DISPOSAL OF

- Section 46-1001. Estrays—department authorized to take possession of.  
 46-1002. Taking up and disposal of estrays—advertisement.  
 46-1003. Sale at public auction—branding.  
 46-1004. Expenses, how paid—disposition of proceeds of sale.  
 46-1005. "Estray," defined.  
 46-1006. Publication of description of estrays sold—disposition of proceeds remaining in state treasury.  
 46-1008. Shipment of stray cattle—duty of shipper and railroad agents—petition for inspection.  
 46-1011. Powers and duties of inspectors outside of state.  
 46-1012. Department to furnish blanks.

46-1001. (3333) Estrays—department authorized to take possession of. The department of livestock and its appointed stock inspectors may take possession of estrays found running at large in this state, and may dispose of the estrays, subject to the following restrictions.

History: En. Sec. 1, Ch. 34, L. 1915; re-en. Sec. 3333, R. C. M. 1921; amd. Sec. 133, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "livestock commission" in the caption; substituted "The department of livestock" for "The livestock commission" at the beginning of the section; and made minor changes in phraseology.

46-1002. (3334) Taking up and disposal of estrays—advertisement. A stock inspector authorized by the department shall take into his possession an estray found in his district, and shall either ship, or arrange for the shipment of, the estray to a licensed livestock market for sale. The proceeds from the sale shall be disposed of under sections 46-1004 and 46-1006; or he may hold the estray in his possession, and care for the estray in the cheapest and most practicable manner for a period of not less than thirty (30) days, nor more than sixty (60) days, during which time he shall advertise that he holds the estray, and that unless claimed by the owner he will, on a date to be specified in the notice, sell the estray at a public auction to the highest bidder for cash. The notice shall be published in the newspaper doing the county printing of the county in which the estray is found, and in addition to that paper in a paper published in the town or city nearest the place in which the estray is held. This notice shall be published at least once a week for four (4) consecutive weeks, and shall contain a statement of the date of the sale, the place where the sale is to be held, and a general description of the estray, including the sex and the approximate age, together with an illustration of the brand and the position of the brand on the estray, and a description of the place or locality where the estray was found or taken. The owner of the estray may appear and claim it at any time before the sale or shipment, as provided in this chapter, and without cost or expense to the owner.

History: En. Sec. 2, Ch. 34, L. 1915; re-en. Sec. 3334, R. C. M. 1921; amd. Sec. 1, Ch. 34, L. 1943; amd. Sec. 134, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "Montana livestock commission" in the first sentence; substituted "as provided in this chapter" for "as hereinafter provided" in the last sentence; and made minor changes in phraseology and punctuation.

**46-1003. (3335) Sale at public auction—branding.** On the date specified in the notice provided for in section 46-1002, the stock inspector shall sell the estray at a public auction to the highest bidder for cash. Before removal from the sale the stock inspector shall brand the estray with the recorded estray brand of the department.

History: En. Sec. 3, Ch. 34, L. 1915; re-en. Sec. 3335, R. C. M. 1921; amd. Sec. 135, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "sec-

tion 46-1002" for "the preceding section"; substituted "department" for "livestock commission"; and made minor changes in phraseology and punctuation.

**46-1004. (3336) Expenses, how paid—disposition of proceeds of sale.** Expenses for collecting, holding, advertising, and selling of the estray shall be paid out of the gross proceeds of the sale of the estray, and the balance of the proceeds of the sale shall be forwarded to the department to be advertised as estray funds in the manner provided by law. The proceeds are subject to claim by the owner of the animal for a period of two (2) years from the date of the sale. If the owner of the estray claims the animal before the sale of the animal, the expense incurred by the stock inspector to that time shall be paid by the department as an expense of the department.

History: En. Sec. 4, Ch. 34, L. 1915; re-en. Sec. 3336, R. C. M. 1921; amd. Sec. 136, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted refer-

ences to "department" throughout the section for references to "livestock commission" and to "commission" and made minor changes in phraseology and punctuation.

**46-1005. (3337) "Estray," defined.** In this act "estray" means a horse, mule, mare, gelding, colt, cow, ox, bull, stag, steer, heifer, calf, sheep, or lamb, not bearing a brand and the ownership of which cannot be determined by the stock; inspector of the district in which the animal is found, by inquiry among reputable resident stock owners or freeholders; or any of these animals bearing a recorded brand, the owner of which brand cannot be located at or through the post office designated on the records of the department, or which owner cannot be located by the stock inspector of the district where the estray is found by inquiry among reputable resident stock owners or freeholders; or any of these animals which bears an unrecorded brand, the owner of which unrecorded brand cannot be ascertained by the stock inspector of the district in which the animal is found, by inquiry among reputable resident stock owners or freeholders.

History: En. Sec. 5, Ch. 34, L. 1915; re-en. Sec. 3337, R. C. M. 1921; amd. Sec. 1, Ch. 112, L. 1959; amd. Sec. 1, Ch. 37, L. 1963; amd. Sec. 137, Ch. 310, L. 1974.

#### Amendments

The 1963 amendment extended the section to include sheep and lambs.

The 1974 amendment substituted "on

the records of the department" for "upon the records of the recorder of marks and brands" and made minor changes in phraseology and punctuation.

#### Repealing Clause

Section 2 of Ch. 37, Laws 1963 repealed all acts and parts of acts in conflict therewith.

**46-1006. (3338) Publication of description of estrays sold—disposition of proceeds remaining in state treasury.** A full description of estrays for which the proceeds derived from the sale remains in the hands of the treasurer unclaimed shall be published for the period of two (2) consecutive weekly, semimonthly, or monthly issues after May 1 of each year in not more than four (4) weekly, semimonthly, or monthly publications in this state. The publications shall be designated by the department, and when the publication has been made and the proceeds from the sale of the estrays has remained in the hands of the state treasurer for a period of two (2) years; it shall be, by the treasurer, upon request of the department, immediately be placed to the credit of the earmarked revenue fund for the use of the department.

**History:** En. Sec. 5, Ch. 2, L. 1911; amd. Sec. 1, Ch. 20, L. 1919; re-en. Sec. 3338, R. C. M. 1921; amd. Sec. 1, Ch. 63, L. 1927; amd. Sec. 1, Ch. 95, L. 1941; amd. Sec. 107, Ch. 147, L. 1963; amd. Sec. 138, Ch. 310, L. 1974.

#### Amendments

The 1963 amendment substituted "earmarked revenue fund for the use of the livestock commission" for "state live-

stock commission fund" at the end of the section.

The 1974 amendment substituted "department" for "state livestock commission" in two places; substituted "earmarked revenue fund for the use of the department" for "earmarked revenue fund for the use of the livestock commission" at the end of the section; and made minor changes in phraseology and punctuation.

**46-1008. (3341) Shipment of stray cattle—duty of shipper and railroad agents—petition for inspection.** A person, agent, firm, corporation, pool, or roundup association who ships cattle by railroad to a market where Montana livestock inspectors are maintained, may ship with their own cattle estrays which are among them. They must before shipment, or at the time of loading the cattle on the cars for shipment, carefully and as accurately as possible inspect or tally the brand on the cattle, whether their own or estrays, making a list in duplicate. The list shall state the date of loading, name of shipper, description of brands on each animal, number and class of the cattle bearing the brand, destination, name of the commission firm to whom consigned, and the name of the person in charge of the shipment; and in the case of cattle not owned by the shipper which are marked with a recorded brand, or where the owner is known to be someone other than the shipper, the shipper must obtain the written consent of the owner, or the written consent of a state stock inspector or a deputy state stock inspector before shipment of the cattle. The railroad agent at the point of loading shall require from the shipper the lists described in this act, and shall forward, within twenty-four (24) hours after loading, one (1) copy to the department, and another copy to the Montana brand inspector at the point of destination. However, in a county where there has been established an association of livestock people, the department, on the receipt of a petition from an association, shall require that all cattle shipped by rail from the county be inspected by a state stock inspector or deputy state stock inspector before the cattle are loaded. The petition must be



signed by at least fifty-one per cent (51%) of the owners of cattle in the county, and these petitioners must own at least fifty-five per cent (55%) of the cattle as shown by the most recent completed assessment records of the county assessors.

**History:** En. Sec. 1, Ch. 94, L. 1907; Sec. 1820, Rev. C. 1907; re-en. Sec. 3341, R. C. M. 1921; amd. Sec. 1, Ch. 29, L. 1923; amd. Sec. 1, Ch. 137, L. 1943; amd. Sec. 1, Ch. 99, L. 1957; amd. Sec. 139, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "livestock commission at Helena, Montana" in the fourth sentence; substituted "department" for "livestock commission" in the fifth sentence; and made minor changes in phraseology and punctuation.

**46-1011. (3343) Powers and duties of inspectors outside of state.** The stock inspector appointed to inspect Montana cattle at a cattle market outside this state shall be commissioned by the department, and may inspect cattle that come from this state to the market where he is located. He has the same power as stock inspectors in this state to inspect and seize stock which he has reason to believe is stolen, or on which brands have been altered or obliterated. He may take the proceeds of an animal in dispute, or bearing altered or burned brands, remitting the proceeds to the department, which shall hold the proceeds pending a decision on ownership. The stock inspector shall, on receipt of the certified lists mentioned in sections 46-1009 and 46-1010, make an inspection of the cattle listed, and if, on comparison of the list with his own inspection, he finds a difference or discrepancy, he shall make a second inspection of any animal for which the two tallies do not agree, clipping the animal when necessary to determine, accurately and definitely, which inspection or tally is correct. He shall immediately make an inspection report to the department, stating in detail where the discrepancies with the loading tally exist, and calling special attention to his own inspection of the animal. He shall, in his own report, make mention of any animal, with the brands on the animal, which were taken out by the shipper in charge of the stock while in transit between the original loading point and point of final destination. These reports shall be entered in a suitably bound book and are at all times open to public inspection.

**History:** En. Sec. 3, Ch. 94, L. 1907; Sec. 1822, Rev. C. 1907; re-en. Sec. 3343, R. C. M. 1921; amd. Sec. 140, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "livestock commission" in three places and made minor changes in phraseology and punctuation.

**46-1012. (3344) Department to furnish blanks.** The department shall have printed the necessary blanks for the tallying of cattle at loading points under section 46-1008, and it shall furnish the blanks free to shippers on application. The expense of the printing shall be paid by the department.

**History:** En. Sec. 4, Ch. 94, L. 1907; Sec. 1823, Rev. C. 1907; re-en. Sec. 3344, R. C. M. 1921; amd. Sec. 141, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "Department" for "Livestock commission" in

the caption; substituted "The department" for "The livestock commission" at the beginning of the section; substituted "paid by the department" for "paid out of the livestock commission fund" at the end of the section; and made minor changes in phraseology.

## CHAPTER 11—HIDES OF SLAUGHTERED CATTLE—REGULATION— HIDE DEALERS' LICENSES

### Section 46-1101.1. Definitions.

46-1101.2. Hide certificate—identification.

46-1107. Hide dealer or buyer's license fee—disposition of proceeds.

46-1114. Seizure and sale of hides when ownership cannot be determined—disposition of proceeds.

**46-1101.1. Definitions.** (1) "Animal hide" means the hide of a cattle, horse, mare, colt, mule, jack, or jenny.

(2) "Seller" means a person selling or delivering animal hides for or without a pecuniary consideration.

(3) "Inspector" means a sheriff, deputy sheriff, state stock inspector or deputy state stock inspector appointed by the department of livestock.

(4) "Hide certificate" means a certificate showing a transfer of ownership of animal hides.

**History:** En. Sec. 1, Ch. 44, L. 1961; amd. Sec. 142, Ch. 310, L. 1974.

### Amendments

The 1974 amendment changed the subsection designations from small letters to numerals; deleted a definition reading:

"'Commission' means the livestock commission of the state of Montana"; substituted "department of livestock" for "livestock commission" at the end of subsection (3); and made minor changes in phraseology and punctuation.

**46-1101.2. Hide certificate—identification.** (1) A seller of an animal hide shall obtain a hide certificate from the person receiving the hide. The department shall prescribe the form of the certificate which shall include the marks and brands on each hide. The party receiving the hide must designate where it will be kept for thirty (30) days following delivery. The certificate must be signed by the seller or his agent and the person receiving the hide.

(2) Hide certificates, tags and glue shall be furnished to the sheriff of each county by the department at cost and by the sheriff to any person requiring the certificates, tags, and glue. Only those certificates, tags, and glue distributed by the department may lawfully be used under this act. The original certificate shall be filed with the sheriff of the county of the seller's residence. One (1) copy shall be sent by the party receiving the hide to the department, one (1) retained by the seller, and one (1) by the hide buyer. On reasonable notice, a sheriff, deputy sheriff, state stock inspector, or deputy state stock inspector may inspect the hide certificate copy of the seller or buyer. The department shall prescribe an identification tag to be affixed to each hide by the person receiving the hide when it is delivered. Hide dealers and buyers must mail the original hide certificate to the sheriff of each county in which hides are purchased within five (5) days after purchase.

**History:** En. Sec. 2, Ch. 44, L. 1961; amd. Sec. 143, Ch. 310, L. 1974.

### Amendments

The 1974 amendment inserted the nu-

merical subsection designations at the beginning of the paragraphs; substituted "department" for "commission" throughout the section; and made minor changes in phraseology and punctuation.

**46-1107. (3350.8) Hide dealer or buyer's license fee—disposition of proceeds.** A hide dealer or buyer shall pay to the department a license

fee of five dollars (\$5) for each established place of business at which the hide dealer or buyer purchases or deals in hides, before engaging in or conducting this business in this state. The license continues in force for that calendar year. The moneys collected from the licenses shall be placed in the earmarked revenue fund of the department. The license must be renewed January 1 of each year.

**History:** En. Sec. 2, Ch. 151, L. 1929; amd. Sec. 2, Ch. 177, L. 1939; amd. Sec. 5, Ch. 44, L. 1961; amd. Sec. 4, Ch. 248, L. 1965; amd. Sec. 144, Ch. 310, L. 1974.

#### Amendments

The 1965 amendment substituted "earmarked revenue fund, livestock commission account" for "livestock commission

fund" at the end of the second sentence.

The 1974 amendment substituted "department" for "livestock commission" in the first sentence; substituted "earmarked revenue fund of the department" for "earmarked revenue fund, livestock commission account" at the end of the second sentence; and made minor changes in phraseology and punctuation.

**46-1114. Seizure and sale of hides when ownership cannot be determined—disposition of proceeds.** (1) A state stock inspector or other officer who has authority to make an inspection of a slaughtered beef, veal or hide of a beef or veal, may seize and hold the hide, when on inspection the officer finds that the brand is so altered, obliterated, or defaced that the original brand cannot be determined by a reasonable inspection, or when he finds that ownership cannot be established by the brand or by other satisfactory proof.

(2) If within fifteen (15) days after the seizure of the hide, proof of ownership cannot be established either by brand, bill of sale, or otherwise, the officer may sell the hide at the best available price and remit the proceeds, less the cost of processing, storing, and selling to the department together with a full report of his investigation. The report shall contain a statement of the reason for the seizure and sale together with any tendered proof of ownership of any party. The proceeds shall be deposited by the department with the state treasurer and credited to the stock estray fund, where it shall be subject to claim by a party showing proper proof of ownership in the same manner as provided in section 46-1004.

**History:** En. Sec. 1, Ch. 113, L. 1961; amd. Sec. 145, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment inserted the numerical subsection designations at the beginning of the paragraphs; substituted "department" for "Montana livestock commission" and "livestock commission" in

subsection (2); substituted "in the same manner as provided in section 46-1004" for "in the same manner and for the same length of time as is provided by law for the making of claims against the said fund" at the end of subsection (2); and made minor changes in phraseology and punctuation.

## CHAPTER 14—LEGAL FENCES—LIABILITY OF OWNERS FOR TRESPASSING STOCK

Section 46-1410. Stock trespassing may be retained.

46-1411. Marking land and mining claims in national forest.

46-1413. Marking—right of action against trespassing stock.

**46-1410. (3379) Stock trespassing may be retained.** (1) If an animal breaks into an inclosure surrounded by a legal fence, or is wrongfully on the premises of another, the owner or occupant of the inclosure or premises may take into his possession the trespassing animal, and keep the ani-



mal until all damages, together with reasonable charges for keeping and feeding the animal are paid. The person who takes the animal into his possession shall, within seventy-two (72) hours after he takes possession, give written notice to the owner or person in charge of the animal, stating that he has taken the animal. The notice shall also give the date of the taking, the description of the animal taken, including marks and brands, if any, the amount of damages claimed, and the charge per head per day for caring for and feeding the animal, and shall describe, either by legal subdivisions or other general description, the location of the premises on which the animals are held. In all cases a copy of the notice shall also be posted at a point where the stock was taken.

(2) The notice shall be given to the owner or person in charge only when the owner or person in charge of the animal is known to the person taking the animal and resides within twenty-five (25) miles of the premises on which the animals have been taken. If the owner or person in charge of the animal resides more than twenty-five (25) miles from the place of the taking, the notice shall be mailed to him, and in this case, and also if the owner is unknown, a similar notice shall be mailed to the department of livestock and the sheriff of the county in which the animals have been taken. On receipt of the notice, the sheriff shall post a copy of the notice at the courthouse and shall send by registered mail a copy of it to the owner of the stock, if known to him. If unknown to him, the sheriff shall send a copy of the notice to the nearest state livestock inspector.

(3) If the parties within five (5) days thereafter do not agree to the amount of damages, the lien claimant must within ten (10) days thereafter institute a civil action to foreclose his lien in a court of competent jurisdiction. Pending the outcome of the suit, the person taking the stock may, at the expense of the owner, retain a sufficient amount of stock to cover the amount of damages claimed by him. The defendant may, after the institution of the action, on filing a bond executed by two (2) or more sureties and approved by the court, in double the sum sued for, conditioned for the payment to the plaintiff of all sums, including costs that may be recovered by the plaintiff, have all livestock returned to him, and the person is liable to the owner for any loss or injury to the stock occurring through his fault or neglect. If the person taking the stock fails to recover in the action a sum equal to that offered him by the owner of the stock, the former bears the expense of keeping and feeding the stock while in his possession.

(4) A person who takes or rescues an animal from the possession of the person taking the animal, without his consent, is guilty of a misdemeanor, and shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

History: En. Sec. 8, p. 48, L. 1881; re-en. Sec. 1120, 5th Div. Comp. Stat. 1887; re-en. Sec. 3259, Pol. C. 1895; re-en. Sec. 2091, Rev. C. 1907; amd. Sec. 1, Ch. 231, L. 1921; re-en. Sec. 3379, R. C. M. 1921; amd. Sec. 146, Ch. 310, L. 1974.

partment of livestock" for "Montana livestock commission" in the second sentence of subsection (2) and made minor changes in phraseology and punctuation throughout the section.

#### Amendments

The 1974 amendment substituted "de-

#### Personal Injury in Removing Animal

The notice requirements of subsection (2) were irrelevant to an action against

the owner of a trespassing mule for personal injuries sustained in attempting to remove the mule. *Ekwortzel v. Parker*, 156 M 477, 482 P 2d 559.

**46-1411. (3380) Marking land and mining claims in national forest.** It shall be the duty of the owner, or the person holding possessory right, to all unfenced lands, or patented or unpatented mining claims, which said lands or patented or unpatented mining claims lie within the boundary of national forest reserves in the state of Montana, or lying on public ranges adjoining to any national forest reserve, to mark the boundaries thereof by substantial monuments that can be readily seen and observed so that such boundaries can be readily traced.

**History:** En. Sec. 1, Ch. 222, L. 1921; re-en. Sec. 3380, R. C. M. 1921; amd. Sec. 1, Ch. 31, L. 1963.

#### Amendment

The 1963 amendment inserted "or unpatented" before "mining claims" in two places.

**46-1413. (3382) Marking—right of action against trespassing stock.** No person owning or possessing agricultural or grazing land, or patented or unpatented mining claims lying within said national forest reserves of this state or on the public range lying adjoining to any said national forest reserve, the boundaries of which said lands are not marked as required by the provisions of this act, shall have any claim or cause of action or right of action against the owner of sheep, cattle or other livestock under the charge of a herder, for trespass committed by such livestock upon said land, and such shall be the rule regardless of whether the said livestock so trespassing strayed thereon on their own inclination and without being driven, or whether said livestock were herded or driven on said land; provided, that no person or persons can claim exemption for trespassing under the provisions of this section where such person or persons shall have actual knowledge of the boundary lines of any lands herein referred to; but in no event shall damages other than nominal damages be assessed against said trespass, unless the landowner or his duly authorized agent shall within six months after said trespass has been committed, give said trespasser written notice demanding a sum certain for damages sustained by reason of such trespass.

**History:** En. Sec. 3, Ch. 222, L. 1921; re-en. Sec. 3382, R. C. M. 1921; amd. Sec. 1, Ch. 78, L. 1927; amd. Sec. 2, Ch. 31, L. 1963.

#### Repealing Clause

Section 3 of Ch. 31, Laws 1963 repealed all acts and parts of acts in conflict therewith.

#### Amendment

The 1963 amendment inserted "or unpatented" before "mining claims" near the beginning of the section; and substituted "livestock" for "sheep" before "so trespassing" and before "were herded or driven."

#### Effective Date

Section 4 of Ch. 31, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 2, 1963.

## CHAPTER 15—HERD DISTRICTS

Section 46-1501. Herd districts—creation, size, location—dissolution—exclusion of government land—records.

**46-1501. (3384) Herd districts—creation, size, location—dissolution—exclusion of government land—records.** (a) to (c) \* \* \* [Same as parent volume.]

(d) Herd districts may be created jointly between any two (2) or more counties of the state of Montana where the lands to be included in the district meet the requirements of this section and either extend across county boundaries under one (1) ownership or are contiguous to the land of owners in the adjoining county wishing to participate in the herd district. The county commissioner boards of each county desiring to participate in a joint herd district shall comply with all the provisions of this section dealing with single-county districts. A joint herd district shall be created only after approval by all county commissioner boards of participating counties as provided for single-county herd districts in this section. Joint herd districts may be dissolved in the same manner as single-county herd districts.

**History:** En. Ch. 74, L. 1917; amd. Sec. 2, Ch. 167, L. 1919; re-en. Sec. 3384, R. C. M. 1921; amd. Sec. 1, Ch. 56, L. 1929; amd. Sec. 1, Ch. 117, L. 1931; amd. Sec. 1, Ch. 103, L. 1951; amd. Sec.

1, Ch. 209, L. 1959; amd. Sec. 1, Ch. 39, L. 1974.

#### Amendments

The 1974 amendment added subsection (d).

## CHAPTER 17—ANIMALS RUNNING AT LARGE

Section 46-1701. Rams and he-goats not to run at large.  
46-1720. [Transferred from Title 94.]

**46-1701. (3390) Rams and he-goats not to run at large.** (1) It is unlawful for an owner or person having the management or control of a ram or he-goat to permit it to run at large between August 1 and December 1 of each year.

(2) A person violating this section is guilty of a misdemeanor.

**History:** En. Sec. 76, 5th Div. Comp. Stat. 1887; re-en. Sec. 3060, Pol. C. 1895; re-en. Sec. 1881, Rev. C. 1907; re-en. Sec. 3390, R. C. M. 1921; amd. Sec. 147, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment inserted the subsection designation "(1)" at the beginning of the section; made minor changes in phraseology in subsection (1); and added subsection (2).

**46-1702. (3391) Repealed.**

#### Repeal

Section 46-1702 (Sec. 3061, Pol. C. 1895), relating to the penalty for per-

mitting rams and he-goats to run at large, was repealed by Sec. 201, Ch. 310, Laws of 1974. See section 46-1701(2).

**46-1709. (3400.3) Castration of animals running at large, etc.**

#### Notice to Owner

The notice requirements of this section were irrelevant to an action against the owner of a trespassing mule for personal

injuries sustained in attempting to remove the mule. *Ekwertzel v. Parker*, 156 M 477, 482 P 2d 559.

**46-1720. [Transferred from Title 94.]**

#### Compiler's Notes

This section was originally numbered 94-3522. Section 29, Ch. 513, Laws of 1973 renumbered it to appear in this

title. Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-3522.



## CHAPTER 18—ROUNDUP AND SALE OF ABANDONED HORSES

Section 46-1801. Definitions.

46-1804. Notice of holding roundup—publication.

**46-1801. (3406.1) Definitions.** Unless the context requires otherwise, in this act:

(1) "Abandoned horse" means a horse, mare, gelding, filly, jack, mule, or other animal of the genus equus, one (1) year of age or over, and unbranded, or if branded, which has escaped assessment for taxation for the year immediately preceding its impounding as provided for in this act, and running at large on the open range of this state, including foals running with dams coming within the above definition. An animal not bearing a decipherable brand which is recorded with the department of livestock is considered unbranded.

(2) "Open range" means all lands in this state not inclosed by a fence. The term "open range" includes all highways outside of private inclosures and used by the public, whether the highways have been formally dedicated to the public or not.

(3) "Person" includes individuals, associations, persons, and corporations.

**History:** En. Sec. 1, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; amd. Sec. 148, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment inserted the numerical subsection designations at the beginning of the paragraphs; substituted

"as provided for in this act" for "as hereinafter provided for" in subsection (1); substituted "with the department of livestock" for "in the office of the recorder of marks and brands" in the last sentence of subsection (1); and made minor changes in phraseology and punctuation throughout the section.

**46-1804. Notice of holding roundup—publication.** Notice of the roundup shall be given by the board of county commissioners at least thirty (30) days before the date when the roundup begins. The notices shall be published at least once a week for three (3) successive weeks in some newspaper of general circulation, printed and published in the county in which the roundup is to be held, if a newspaper of this type is printed and published in the county. The notice shall be posted in at least five (5) public places, outside of the county seat of the county on public highways in the county or district, as the case may be, in which the roundup is to be held. Three (3) notices shall be posted in three (3) public places in the county seat, one of the notices shall be posted at the front door of the courthouse. The notices posted outside of the county seat are to be posted not less than two (2) miles apart and all posted notices are to be posted at least twenty (20) days before the date on which the roundup begins as stated in the notice. If no newspaper is printed and published in the county, publication in a newspaper is not required. At least twenty (20) days before the date on which the roundup is to begin, a copy of the notice shall be filed with the department, by the clerk of the board of county commissioners.

**History:** En. Sec. 4, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; amd. Sec. 149, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "Montana livestock commission" in the last sentence; deleted a form for the notice; and made minor changes in phraseology and punctuation.

## CHAPTER 19—BOUNTIES FOR KILLING WILD ANIMALS— KILLING DOGS INJURING LIVESTOCK

- Section 46-1901. Five per cent of county license money to be used for payment of bounty claims.
- 46-1902. Meaning of term "wild animal."
- 46-1903. Department to supervise destruction of predatory animals—co-operation with other agencies—administration of moneys.
- 46-1904. Disposal of proceeds from sale of skins, hides and specimens—presenting to museums.
- 46-1907. Bounty inspectors—form of claim—affidavits required—penalty for falsification—records.
- 46-1908. Bounty claims and certificates to be filed with department.
- 46-1909. Department to examine claims and certificates—approval or disapproval of claims.
- 46-1912. Use of funds remaining after payment of bounties—sale of furs, skins and specimens—presentation to museums.
- 46-1914. Levy of tax for purpose of paying for destruction of wild animals—limitation on levy.
- 46-1915. Penalty for fraudulent claims.

46-1901. (3414) Five per cent of county license money to be used for payment of bounty claims. For the purpose of providing for the payment of bounty claims five per cent of all license money collected by the several county treasurers of the state shall be paid over by said county treasurers to the state treasurer and shall by the latter be deposited in the earmarked revenue fund.

**History:** En. Sec. 3075, Pol. C. 1895; re-en. Sec. 1909, Rev. C. 1907; amd. Sec. 1, Ch. 13, L. 1921; re-en. Sec. 3414, R. C. M. 1921; amd. Sec. 97, Ch. 147, L. 1963.

hereby created a fund to be known as the state bounty fund which shall consist of" before "five per cent"; deleted "and said moneys" before "shall be paid over"; and substituted "the earmarked revenue fund" at the end of the section for "the state bounty fund."

### Amendment

The 1963 amendment deleted "there is

46-1902. (3417.1) Meaning of term "wild animal." For the purpose of this act the term "wild animal" shall include wolf, coyote, lynx, bobcat, and any other animal causing depredations upon livestock.

**History:** En. Sec. 1, Ch. 73, L. 1923; amd. Sec. 2, Ch. 27, L. 1974.

### Amendments

The 1974 amendment deleted "wolverine" and "mountain lion" from the definition of "wild animal."

46-1903. (3417.2) Department to supervise destruction of predatory animals—co-operation with other agencies—administration of moneys. (1) The department of livestock shall conduct the destruction, extermination, and control of wild animals, including wolf, coyote, lynx, bobcat and other wild animals predatory in nature and capable of killing, destroying, maiming, or injuring domestic livestock or domestic poultry; and the protection and safeguarding of livestock and poultry in this state, against depredations from these animals. The department shall formulate the practical programs for accomplishing these objectives in this state, and for carrying out the programs in an efficient and practical manner, responsive to the need for control in each area of this state. The department shall adopt rules

applicable to predatory animal control, which are necessary and proper for the systematic destruction of the wild animals by hunting, trapping, and poisoning operations, and payments of bounties. The department shall make field, area, range, or other orders and instructions, including orders and instructions to hunter and trapper personnel and others, which are appropriate in the various areas, at different seasons of the year, taking into consideration the habits, presence, migrations, or movements of the animals, and their attacks on livestock and poultry, either singly or in packs or bands. The department shall co-operate with authorized representatives of the federal government, including the Biological Survey and the Fish and Wild Life Service, the state fish and game commission, boards of county commissioners, voluntary associations of stockgrowers, sheepgrowers, ranchers, farmers, and sportsmen, and corporations and individuals, in the systematic destruction of wild animals by hunting, trapping, and poisoning operations.

(2) The department shall administer and expend for predatory animal extermination and control all money which is made available to it, including the money from the levy under section 84-5214, and all money which is made available to the department by appropriations made by the legislature for predatory animal control by the department. The department shall expend the funds for predatory animal control by all effective means, including employment of hunters, trappers, and other personnel, procurement of traps, poisons, equipment, and supplies, and payment of bounties in the discretion of the department, responsive to the necessities of control in various areas of the state.

(3) This section does not interfere with or impair the power and duties of the fish and game commission in the control of predatory animals by the commission, as authorized by law, nor the obligation of the commission to expend its funds in co-operation with the department, for predatory animal control, as required by law. Funds of the fish and game commission for the co-operative predatory animal control shall be administered and expended by the fish and game commission.

**History:** En. Sec. 2, Ch. 73, L. 1923; amd. Sec. 1, Ch. 113, L. 1947; amd. Sec. 98, Ch. 147, L. 1963; amd. Sec. 21, Ch. 100, L. 1973; amd. Sec. 3, Ch. 27, L. 1974; amd. Sec. 150, Ch. 310, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 27 and once by Ch. 310. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

The 1963 amendment deleted references to the state bounty fund in subsection (2).

The 1973 amendment deleted references to section 9 of article XII, of the constitution of Montana in subsection (2).

Chapter 27, Laws of 1974, deleted "wolf", "mountain lion," and "cougar" from the enumeration of predatory animals in the first sentence of subsection (1).

Chapter 310, Laws of 1974, changed the subsection designations from small letters to numerals; substituted references to "department of livestock" and "department" throughout the section for references to "Montana livestock commission" and "commission"; deleted former subsection (b) pertaining to an advisory committee appointed by the governor; and made minor changes in phraseology and punctuation throughout the section.

46-1904. (3417.3) Disposal of proceeds from sale of skins, hides and specimens—presenting to museums. Furs, skins, and specimens taken by



hunters or trappers shall be sold by the department. The proceeds from the sales shall be credited to the earmarked revenue fund. The proceeds shall be used to carry out this act. Specimens may be presented, free of charge, to a state museum or institution.

History: En. Sec. 3, Ch. 73, L. 1923; amd. Sec. 99, Ch. 147, L. 1963; amd. Sec. 151, Ch. 310, L. 1974.

#### Amendments

The 1963 amendment deleted "whose salaries may be paid in whole or in part out of the fund herein created" which fol-

lowed "hunters or trappers"; and substituted "earmarked revenue fund" for "bounty fund."

The 1974 amendment substituted "department" for "livestock commission" and made minor changes in phraseology and punctuation.

**46-1907. (3417.6) Bounty inspectors—form of claim—affidavits required—penalty for falsification—records.** (1) The sheriff of a county and undersheriffs and deputy sheriffs located at the county seat, but not elsewhere, shall receive and examine skins and pelts presented for bounty in their respective counties. The sheriff shall receive ten cents (\$.10) for each skin examined, this amount to be paid by the owner of the skin. A sheriff, undersheriff, and deputy sheriff, to prevent fraud, shall carefully examine each skin presented. If the examination discloses that the scalp and ears with the skin from the entire head of the animal have not been severed, punched, patched, or marked, he shall, in the presence of the person presenting the skin, mark the skin by severing the skin from the head, including the ears, and then redeliver the skin to the person presenting it, and shall require an affidavit from the claimant that the claimant killed the animal. The affidavit shall be on forms prescribed by the department, and contain information the department requires. The officer shall require affidavits from two (2) resident taxpayers residing in the vicinity in which the animal was killed, setting forth that they are resident taxpayers on livestock, giving their post-office addresses and stating that they are personally acquainted with the person presenting the skin, and to their knowledge, the person did kill the animal from which the skin was taken within thirty (30) days preceding the offering of the skin for a bounty to the sheriff, undersheriff, or deputy sheriff to which it is presented. The officer shall at the same time make out and deliver to the person a certificate addressed to the county clerk of his county, and immediately deliver to the county clerk a duplicate of the certificate, showing the date, number, and kind of skins marked for severing, and the name of the person presenting the skins. The certificate shall also recite that the filing of the affidavits of taxpayers previously required has been done and the examination has been made as required. The certificate shall be signed by the officer in his official capacity. When a doubt exists as to the kind of skin presented, whether wolf or coyote, the certificate shall be issued for the lesser bounty. Each sheriff shall keep a record of all skins marked and severed, showing the date, number, and kinds and the names of the persons presenting the skins. This record is an official record. The sheriff, undersheriff, or deputy sheriff may not perform any duties under this act except at the county seat.

(2) A taxpayer who makes a false certificate or affidavit under this section in a material portion is guilty of a felony, punishable the same as for the crime of perjury. The sheriff shall, not later than the fifteenth

of each month, give to the county clerk and recorder a report setting forth the names of the persons presenting skins, with the number of the certificate, the kind and number of the skins presented. The sheriff shall report for each certificate which he has issued during the month.

(3) The county clerk shall, on receipt of each certificate, file the certificate in the order in which they are received, and safely keep them until the arrival of the skin or skins mentioned in the certificate. On receipt of the skin or skins he shall call to his assistance either the county treasurer, or, in his absence, the clerk of the district court, who, with both present, in order to prevent fraud, shall examine each scalp. If the examination discloses that the scalps agree with the number and kind of scalps, or lower jaw of mountain lion, mentioned in the certificate, the county clerk shall, in the presence of the treasurer or clerk of the district court, destroy the scalps by fire. The county clerk shall then make out and deliver to the person named in that certificate a second certificate showing the statement of the facts contained in the certificate to the sheriff, undersheriff, or deputy sheriff, with the additional statement of the examination made by him, and that he found the scalps to agree with the number and kind mentioned in the certificate of the sheriff, undersheriff, or deputy sheriff. In no case may a bounty certificate be issued by the county clerk for more scalps than are actually received and counted by him. The county clerk shall receive for each scalp, or mountain lion lower jaw which he accounts for, the sum of five cents (\$.05), to be paid quarterly by the state treasurer out of the bounty fund. The county clerk shall keep a record of all certificates received and issued, showing the date and description of the number and kind of hides, and the names of the persons presenting the hides, and this record is an official record. County clerks are required to send a report and statement to the department on or before the twentieth of each month.

History: En. Sec. 3, Ch. 109, L. 1925; amd. Sec. 152, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "shall require an affidavit from the claimant that the claimant killed the animal" for "shall require the following affidavit from the

claimant" at the end of the fourth sentence in subsection (1); substituted the fifth sentence in subsection (1) for a form of the affidavit; substituted "department" for "livestock commission" in the last sentence of subsection (3); and made minor changes in phraseology and punctuation throughout the section.

**46-1908. (3417.7) Bounty claims and certificates to be filed with department.** Bounty claims and certificates issued by the county clerks and recorders under section 46-1907 shall be filed with the department and registered in a book provided for that purpose.

History: En. Sec. 4, Ch. 109, L. 1925; amd. Sec. 153, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "livestock commission" in the caption and in the text of the section.

**46-1909. (3417.8) Department to examine claims and certificates—approval or disapproval of claims.** The department shall examine and investigate every bounty claim and certificate filed with the department. When it makes the examination and investigation, the department may

require the holder of a certificate or claim to furnish the department with the additional evidence or proof about the certificate or claim which the department considers necessary. The evidence may be either oral or documented, as required by the department. The department shall, after making the examination and investigation, endorse on the certificate or claim its approval or disapproval of it, and if the certificate or claim or any part of it is disapproved, the endorsement shall state the reasons for the disapproval. If a certificate or claim is approved it shall be processed as provided by law.

History: En. Sec. 5, Ch. 109, L. 1925; amd. Sec. 23, Ch. 97, L. 1961; amd. Sec. 154, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted refer-

ences to "department" in the caption and throughout the section for references to "livestock commission" and "commission" and made minor changes in phraseology and punctuation.

**46-1912. (3417.11) Use of funds remaining after payment of bounties—sale of furs, skins and specimens—presentation to museums.** (1) If, at the end of a bounty paying season, there is surplus money available for the administration of this act surplus may be used to hire salaried hunters and trappers to hunt and trap predatory animals and to purchase and supply poison to be used for a poison campaign on predatory animals.

(2) All furs, skins, and specimens taken by hunters or trappers whose salaries are paid in whole or in part out of this money, shall be sold by the department, and the proceeds from these sales shall be credited to the earmarked revenue fund. These funds shall be used to carry out this act. Specimens may be presented, free of charge, to a state museum or institution.

History: En. Sec. 8, Ch. 109, L. 1925; amd. Sec. 155, Ch. 310, L. 1974.

#### Amendments

The 1963 amendment substituted "of moneys available for the administration of Chapter 19, Title 46, R.C.M. 1947" for "in the state bounty fund" in the first paragraph; and in the second paragraph substituted "such moneys" for "the fund

herein created" and "earmarked revenue fund" for "bounty fund."

The 1974 amendment inserted the numerical subsection designations at the beginning of the paragraphs; substituted "this act" for "Chapter 19, Title 46, R. C. M. 1947" in subsection (1); substituted "department" for "livestock commission" in subsection (2); and made minor changes in phraseology and punctuation throughout the section.

**46-1914. (3417.13) Levy of tax for purpose of paying for destruction of wild animals—limitation on levy.** The department of revenue shall annually prescribe the levy recommended by the department to be made against livestock of all classes, for paying for the destruction of wild animals killed in this state. The tax in any one year may not exceed one and one-half (1½) mills on the assessed valuation of the livestock. The money received shall be used only for the payment of claims for the destruction of wild animals and for the administration of this act, approved by the department. The money received for the taxes levied shall be sent annually with other taxes for state purposes to the state treasurer by the county treasurer of each county, and when received by the state treasurer shall be placed in the earmarked revenue fund, and the money may then be paid out on claims approved under the law governing the payment of claims.



History: En. Sec. 10, Ch. 109, L. 1925; amd. Sec. 24, Ch. 97, L. 1961; amd. Sec. 156, Ch. 310, L. 1974.

#### Amendments

The 1963 amendment omitted a former first sentence which read: "There is hereby created a fund, to be known as the 'bounty fund'"; deleted "The tax commission, or" at the beginning of the present text; substituted "earmarked revenue fund" for "bounty fund" near the

end of the section; and deleted "and all moneys in said fund are hereby appropriated for such purposes" at the end of the section.

The 1974 amendment substituted "The department of revenue" for "The department of state whose duty it is to fix tax levies" at the beginning of the section; substituted "department" for "livestock commission" in two places; and made minor changes in phraseology and punctuation.

**46-1915. (3417.14) Penalty for fraudulent claims.** Any person or persons who shall patch up any skin or scalp, or who shall present any punched or patched skin or scalp, or who shall bring in any skin or skins from other states or territory, with the intent to obtain the bounty on the same fraudulently, or any officer who shall sign any certificate herein provided for without first counting the skins and examining the same to determine the kind of skins, and to see that the skin from the scalp or head is properly severed and preserved as hereinbefore provided or shall evade or violate any provision of any law of the state of Montana relative to bounties or bounty claims, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding one thousand dollars (\$1,000.00), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment, and that two-thirds of the fine, if the same be collected, or can be collected, shall be given to the informer, and the balance be deposited in the earmarked revenue fund and used for the administration of this act.

History: En. Sec. 11, Ch. 109, L. 1925; amd. Sec. 102, Ch. 147, L. 1963.

#### Amendment

The 1963 amendment substituted "de-

posited in the earmarked revenue fund and used for the administration of this act" for "converted into the state bounty fund" at the end of the section.

## CHAPTER 20—IMPOUNDING LIVESTOCK OR DOMESTIC ANIMALS

Section 46-2004. Service on department of livestock.

46-2007. Department to ascertain owner—notice.

**46-2001. (5175) Impounding animals—duties of cities and towns.**

#### Cross-Reference

Livestock running at large in emergency

road construction areas, secs. 32-319 to 32-321.

**46-2004. (5178) Service on department of livestock.** If the owner is unknown or if the owner is known but his post-office address is unknown, the notice shall be served on the department of livestock.

History: En. Sec. 4, Ch. 161, L. 1921; re-en. Sec. 5178, R. C. M. 1921; amd. Sec. 157, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment of livestock" for "secretary of the livestock commission" and "secretary of the Montana livestock commission" in the caption and in the text of the section and made minor changes in phraseology.

**46-2007. (5181) Department to ascertain owner—notice.** When the notice is served, the department shall ascertain the owner of the stock,

if possible, and when the owner is ascertained, immediately furnish the owner with the information contained in the notice, and notify the city or town, its officers or agents, of the name and post-office address of the owner.

**History:** En. Sec. 7, Ch. 161, L. 1921; re-en. Sec. 5181, R. C. M. 1921; amd. Sec. 158, Ch. 310, L. 1974.

#### **Amendments**

The 1974 amendment substituted "de-

partment" for "Secretary of livestock commission" in the caption; substituted "department" for "secretary of the Montana livestock commission" in the text of the section; and made minor changes in phraseology.

## **CHAPTER 21—SHEEP—PROTECTION FROM PREDATORY ANIMALS—TAX**

**Section 46-2102.** County commissioners may require per capita license fee on sheep.  
**46-2104.** Duty of county commissioners—petition of sheep owners.

**46-2102. County commissioners may require per capita license fee on sheep.** To defray the expense of such protection the board of county commissioners of any county shall have the power to require all owners or persons in possession of any sheep, coming one year old or over, in the county on the regular assessment date of each year to pay a license fee of not exceeding fifteen cents (15¢) per head of sheep so owned or possessed by him in the county; provided that all owners or persons in possession of any sheep, coming one year old or over, coming into the county after the regular assessment date and subject to taxation under the provisions of section 84-6008 shall also be subject to payment of the license fee herein prescribed. Upon the order of the board of county commissioners such license fees may be imposed by the entry thereof in the name of the licensee upon the property tax rolls of the county by the county assessor. Said license fees shall be payable to and collected by the county treasurer, and when so levied, shall be a lien upon the property, both real and personal of the licensee. In case the person against whom said license fee is levied owns no real estate against which said license fee is or may become a lien, then said license fee shall be payable immediately upon its levy and the treasurer shall collect the same in the manner provided by law for the collection of personal property taxes which are not a lien upon real estate. When collected, said fees shall be placed by the treasurer in the predatory animal control fund and the moneys in said fund shall be expended on order of the board of county commissioners of the county for predatory animal control only. The word "owners" or "persons" shall include natural persons, copartnerships, corporations, trusts and estates.

**History:** En. Sec. 2, Ch. 206, L. 1943; amd. Sec. 1, Ch. 123, L. 1949; amd. Sec. 1, Ch. 87, L. 1957; amd. Sec. 1, Ch. 87, L. 1965.

#### **Amendment**

The 1965 amendment increased the maximum license fee specified in the first sentence from ten to fifteen cents per head.

**46-2104. Duty of county commissioners—petition of sheep owners.** In conducting a predatory animal control program, the board of county commissioners shall give preference to recommendations for such program

and its incidents as made by organized associations of sheep growers in the county. Upon petition of the resident owners of at least fifty-one per cent (51 %) of the sheep in the county, as shown by the assessment rolls of the last preceding assessment, which petition shall be filed with the board of county commissioners on or before the first Monday in December in any year, such board shall establish the predatory animal control program, and cause said licenses to be secured and issued and the fees collected for the following year in such amount, not exceeding the limits of fifteen cents (15¢) per head of sheep as shown by said assessment rolls, as will defray the cost of administering the program so established. The license fee determined and set by the board, within said limits, shall remain in full force and effect from year to year without change, unless there is filed with the board a petition subscribed by the resident owners of at least fifty-one per cent (51 %) of the sheep in the county, as shown by the assessment rolls of the last assessment preceding the filing of the petition, for termination of the program and repeal of the license fee, in which event the program shall by order of the board of county commissioners be disestablished and the license fee shall not be further levied. If the resident owners of at least fifty-one per cent (51 %) of the sheep in the county either (a) petition for an increase in the license fee, subject always to the maximum limitation of fifteen cents (15¢) per head of sheep, or (b) petition for a decrease in the license fee then in force, the board of county commissioners shall upon receipt of any such petition fix a new license fee to continue from year to year and the program shall thereupon continue within the limits of the aggregate amount of the license fee as collected from year to year.

**History:** En. Sec. 4, Ch. 206, L. 1943; amd. Sec. 1, Ch. 24, L. 1949; amd. Sec. 2, Ch. 87, L. 1957; amd. Sec. 2, Ch. 87, L. 1965.

#### Amendment

The 1965 amendment increased the maximum license fee specified near the end of the second sentence and in clause (a) of the final sentence from ten to fifteen cents per head.

### CHAPTER 23—GRASS CONSERVATION—GRAZING DISTRICTS

- Section 46-2301. Grass Conservation Act—co-operation on Taylor Grazing Act.  
 46-2302. Definitions.  
 46-2307. Powers of department and board—state districts.  
 46-2308. Appeals from decisions of state district to board—from board to district court.  
 46-2309. Incorporation of state districts.  
 46-2310. Articles of incorporation, contents.  
 46-2311. Map or plat of district to be filed.  
 46-2312. Powers of state districts.  
 46-2313. Powers and duties of directors.  
 46-2314. Membership in district.  
 46-2315. Bylaws.  
 46-2316. District must lease available state land.  
 46-2317. Department to advise department of state lands and county commissioners.  
 46-2318. Amending articles of incorporation.  
 46-2322. Grazing preferences appurtenant to dependent commensurate property and commensurate property and method of transferring preferences to other lands.  
 46-2323. Subsequent lessees to compensate district for range improvements.  
 46-2325. Dissolution of district.



46-2331. Fees may be imposed by department against districts.

46-2332. Range for wild game animals.

**46-2301. Grass Conservation Act—co-operation on Taylor Grazing Act.** This act may be cited as the "Grass Conservation Act." Its purpose is to provide for the conservation, protection, restoration, and proper utilization of grass, forage and range resources of the state of Montana, to provide for the incorporation of co-operative nonprofit grazing districts, to provide a means of co-operation with the secretary of the interior as provided in the federal act known as the Taylor Grazing Act and any other governmental agency or department having jurisdiction over lands belonging to the United States or other state or federal agency as well as agencies having jurisdiction over federal lands, to permit the setting up of a form of grazing administration which will aid in the unification or control of all grazing lands within the state where the ownership is diverse and the lands intermingled, and to provide for the stabilization of the livestock industry and the protection of dependent commensurate ranch properties as defined herein. The department of natural resources and conservation shall assist in carrying out the purposes of this act, act in an advisory capacity with the department of state lands and board of county commissioners, and supervise and co-ordinate the formation and operation of districts which may be incorporated under this act.

**History:** En. Sec. 1, Ch. 208, L. 1939; amd. Sec. 35, Ch. 253, L. 1974.

state grass conservation commission to"; substituted "department of state lands" in the last sentence for "state land board"; inserted "board of" before "county commissioners" in the last sentence; and made minor changes in style, punctuation and phraseology.

#### **Amendments**

The 1974 amendment substituted "The department of natural resources and conservation shall" at the beginning of the last sentence for "This act provides a

**46-2302. Definitions.** Unless the context requires otherwise, in this act:

(1) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(2) "State district" means a nonprofit co-operative organization incorporated under this act, and its board of directors. "State district" also includes all lands, owned or controlled by the state district or its members.

(3) "Range" is the land within a grazing district upon which grazing permits are granted to maintain livestock through the established grazing period.

(4) "Permits" are evidence of grazing privileges granted by state districts.

(5) "Grazing preference" is a right to obtain a grazing permit from a state district. It is attached to dependent commensurate property except as provided in this act.

(6) "Board" means the board of natural resources and conservation provided for in section 82A-1509, except where the term is used in connection with the board of directors of a state district.

(7) "Person" means a natural person or persons, unincorporated associations, partnerships, corporations and governmental departments or agencies.

(8) "Commensurate property" means land privately owned or controlled which is not range as herein defined.

(9) "Dependent commensurate property" is commensurate property which requires the use of range in connection with it to maintain its proper use, and which produces or whose owner furnishes as part of his past customary practice the proper feed necessary to maintain livestock during the time other than the established grazing period on the range, and which has been used in connection with the range for a period of any three (3) years or for any two (2) consecutive years in the five (5) year period immediately preceding June 28, 1934; or in the case of districts organized after March 15, 1945, for a five (5) year period immediately preceding the date of organization of such districts.

(10) "Animal unit" means one (1) cow, one (1) horse, or five (5) sheep, six (6) months old or over.

(11) "Assessment" means a special levy imposed on permittee members by the state district to raise funds for specific purposes as provided in paragraph 6, section 46-2312. "Assessment" does not include fees.

**History:** En. Sec. 2, Ch. 208, L. 1939; amd. Sec. 1, Ch. 199, L. 1945; amd. Sec. 36, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment substituted the introductory clause for one reading "The following words and phrases used in this act shall take the following interpretations"; substituted subdivision (1) for one reading "'The commission' means 'the Montana grass conservation commission'"; substituted subdivision (6) for one reading "'Secretary' means the state secretary to the state grass conservation

commission appointed under this act"; deleted a former twelfth subdivision reading "All other words used herein shall receive the usual and ordinary interpretation"; and made minor changes in style, punctuation and phraseology.

#### Nonprofit Corporation

Under subdivision 2 of this section, a grazing district is a nonprofit corporation rather than a subdivision of the state, so its powers are not necessarily limited to those expressly granted. Appeal of Two Crow Ranch, Inc., 159 M 16, 494 P 2d 915.

### 46-2303 to 46-2306. Repealed.

#### Repeal

Sections 46-2303 to 46-2306 (Secs. 3 to 6, Ch. 208, L. 1939; Sec. 1, Ch. 61, L. 1945; Sec. 1, Ch. 199, L. 1945; Sec. 1, Ch. 13, L. 1949; Sec. 1, Ch. 124, L. 1953; Secs. 1, 2, Ch. 257, L. 1955; Sec. 25, Ch. 97, L.

1961; Sec. 155, Ch. 147, L. 1963; Sec. 1, Ch. 24, L. 1967; Sec. 3, Ch. 237, L. 1967; Sec. 15, Ch. 93, L. 1969), relating to the Montana grass conservation commission, were repealed by Sec. 208, Ch. 253, Laws of 1974.

**46-2307. Powers of department and board—state districts.** (1) (a) The department may prepare and standardize various forms to be used by the state districts, and supervise or regulate the organization and operation of state districts. If a state district or the directors of a state district fail to comply with an order of the department, the board may order a hearing thereon within the district or county and cite the directors of the district to appear before the board; if upon the hearing it appears that the directors refuse to perform the duties of their office as herein defined and as set forth in the articles of incorporation and the bylaws of the association, or refuse to comply with a lawful order of the department, the directors may

be summarily removed by the board from office, and thereupon the district shall elect new officers. During the period until the election the department may operate and **manage** the affairs of the state district. The expense of operating and managing the affairs of a noncomplying state district shall be paid by the noncomplying state district before it may be reinstated.

(b) If a state district ceases to function and it appears to the board that the reinstatement and future operation of the district is no longer feasible, beneficial and desirable to those who own or control more than fifty per cent (50%) of the lands included in the district, the board, after a hearing thereon, and, upon thirty (30) days' notice in writing, published for two (2) consecutive weeks in a newspaper of general circulation in or nearest to the district, may dissolve the district. A notice of the dissolution shall be filed by the department with the secretary of state and the clerk and recorder of the county or counties in which the district is located.

(2) The department may:

(a) Issue citations directed to any person requiring his attendance before the department or the board, and subpoena witnesses and pay such expenses as would be allowed in a court action.

(b) Require an officer or director of a state district to submit records of the state district to the department for the purpose of aiding an investigation conducted by the department.

(c) Hold hearings on any matters affecting the department.

(d) Require state districts to furnish itemized financial reports annually.

(e) Co-operate and enter into agreements on behalf of a state district, with its consent, with any governmental subdivision, department, or agency, in order to promote the purposes of this act.

**History:** En. Sec. 7, Ch. 208, L. 1939; amd. Sec. 2, Ch. 199, L. 1945; amd. Sec. 37, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment rewrote this sec-

tion, substituting references to the department and the board for references to the commission, deleting a preliminary paragraph, and making numerous deletions throughout the section. For prior version, see parent volume.

**46-2308. Appeals from decisions of state district to board—from board to district court.** (1) Notice of a decision of a state district shall be given in writing by the secretary of the state district to the interested parties or their attorneys by registered mail at the address as shown on the records of the district.

(2) A person affected by the decision of a state district may appeal therefrom to the board which shall hear and decide all those appeals. An appeal from the decision of the district to the board may be taken by filing written notice of the appeal with the department and by filing a copy of the notice of appeal with the secretary of the district and by serving a copy of the notice of appeal by registered mail upon any interested parties who have appeared, or their attorneys, within sixty (60) days after receiving written notice of the decision of the district. The appellant shall also file with the department proof by affidavit of the filing and service of the notice of appeal. The appeal to the board shall be taken and review thereof



had upon the record of any hearing conducted and considered by the state district; however, the board may, at its discretion, and for good cause shown, permit additional testimony to be submitted.

Any person who chooses to become a member of any state district is bound by all the provisions of the Grass Conservation Act and is limited to the statutory remedies therein contained and no court shall have jurisdiction to consider any right claimed under such act excepting only by judicial review from the final decision of the [board] as herein provided.

(3) The Montana Administrative Procedure Act (Title 82, chapter 42, R. C. M. 1947) applies to this act.

**History:** En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3, Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953; amd. Sec. 38, Ch. 253, L. 1974.

#### Compiler's Notes

The compiler has substituted the bracketed word "board" toward the end of the second paragraph of subsection (2) for "commission" to correct an apparent error.

#### Amendments

The 1974 amendment substituted "board" for "commission" throughout the

section; substituted "department" for "secretary of the commission" throughout the section; inserted subsection designations; deleted "and the decisions of said commission shall contain findings of fact which shall be conclusive except for the right to a judicial review as hereinafter provided" at the end of the first paragraph of subsection (2); deleted a former paragraph following the first paragraph of subsection (2) concerning an appeal from the decision of the commission to the district court, as set out in the parent volume; added subsection (3); and made minor changes in punctuation and phraseology.

**46-2309. Incorporation of state districts.** If three (3) or more persons who own or control commensurate property and are livestock operators within the area proposed to be created into a state district decide to incorporate a state district, they shall submit a statement in writing to the department together with a plat showing the proposed boundaries of the area. The statement shall set forth the name of the proposed state district; the county or counties in which the proposed state district is located; and the names and addresses of all operators of land and livestock units within the area. The department may require any additional information it considers necessary. On receipt of the statement and plat and any additional information, the department shall fix a time and place of a hearing for approval within the district or county, which may not be less than thirty (30) days or more than sixty (60) days after receipt of the statement. The persons deciding to incorporate the state grazing district shall then cause notice of the hearing to be given by publishing a notice prescribed by the department once a week for two (2) consecutive weeks, the first publication to be at least thirty (30) days prior to the date of hearing, in a newspaper of general circulation in the area. The department, for and on behalf of the board, shall hear evidence offered in support of, or in opposition to, the creation of the state district, and shall make a full inquiry into the advisability of its creation; the record taken upon the hearing, together with the report of the department, shall be submitted to the board. If the creation of the state district appears feasible, beneficial and desirable to those who own or control more than fifty per cent (50%) of the lands to be included in the district, the board may issue a certificate of approval.

**History:** En. Sec. 9, Ch. 208, L. 1939; amd. Sec. 4, Ch. 199, L. 1945; amd. Sec. 39, Ch. 253, L. 1974.

**Amendments**

The 1974 amendment substituted "de-

partment" in the first five sentences for "commission"; substituted "department" for "secretary" and "board" for "commission" in the last two sentences; and made minor changes in style, punctuation and phraseology.

**46-2310. Articles of incorporation, contents.** Upon the issuance of the certificate of approval, three (3) or more persons who own or control commensurate property and are livestock operators within or near the proposed state district may prepare articles of incorporation and file them in the office of the secretary of state without payment of fees; the articles shall be accompanied by the certificate of approval and signed, sealed, and acknowledged. The articles, as prescribed by the department, shall substantially state the following:

(1) The name of the state district, the last four (4) words of which shall be "co-operative state grazing district."

(2) The county or counties in which the state district is located, and the place where the principal office and business of the state district will be conducted.

(3) The membership fee for each member of the state district which may not be more than five dollars (\$5).

(4) The term for which the state district is incorporated, which may not exceed forty (40) years.

(5) The names and residences of the persons who subscribe, together with a statement that each owns or controls commensurate property and is a livestock operator within the proposed state district.

(6) The powers of the state district, which may not be inconsistent with this act.

(7) The officers of the state district, their principal duties, and the principal duties of the board of directors.

(8) The purpose for which the state district is incorporated. If the articles substantially comply with the requirements set forth in this section and are accompanied by the certificate of approval, the secretary of state shall issue to the state district a certificate of incorporation. All amendments to articles of incorporation shall also be filed by the secretary of state without charge.

**History:** En. Sec. 10, Ch. 208, L. 1939; amd. Sec. 40, Ch. 253, L. 1974.

**Amendments**

The 1974 amendment substituted "de-

partment" for "commission" in the preliminary paragraph; inserted "in this section" in subdivision (8) after "set forth"; and made minor changes in style, punctuation and phraseology.

**46-2311. Map or plat of district to be filed.** A state district shall, upon completion of its organization, file with the county clerk of each county in which its lands lie, a map or plat of the external boundaries of the state district and a copy of its articles of incorporation. If the boundaries of a state district are changed, and the changes are approved by the board after a hearing thereon before the department, the state district shall file with the county clerk or clerks a map or plat indicating

the changed boundaries. If the articles of incorporation are amended, the amendment shall be filed with the county clerk or clerks. A person herding or in control of livestock in the approximate vicinity of a state district shall ascertain the boundary lines of the district.

**History:** En. Sec. 11, Ch. 208, L. 1939; amd. Sec. 41, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment substituted "A state district" at the beginning of the section for "State grazing districts organized

under this act"; deleted "so created" near the end of the first sentence after "state district"; substituted "approved by the board after a hearing thereon before the department" in the second sentence for "approved by the commission"; and made minor changes in phraseology.

#### 46-2312. Powers of state districts. A state district may:

(1) Purchase or market livestock and livestock products, and purchase supplies and equipment. These supplies may include among other things grass, grass seed, or forage, whether attached to and upon or severed from the land.

(2) Sue or be sued in its corporate name.

(3) Acquire forage producing lands by lease, purchase, co-operative agreements, or otherwise, either from the United States, the state of Montana, county or counties in which the lands are located, or from private owners. All lands to which a state district may acquire title may be disposed of by exchange, sale or otherwise.

(4) Manage and control the use of its range. This power includes the right to determine the size of preferences and permit according to a fixed method which shall be stated in the bylaws and which shall take into consideration the rating of dependent commensurate property and the carrying capacity of the range, and may be subject to reservations, regulations and limitations under the terms of agreements between the state district and any agency of the United States. The state district may also allot range to members or nonmembers, and decrease or increase the size of permits if the range carrying capacity changes.

(5) Acquire or construct fences, reservoirs, or other facilities for the care of livestock, and lease or purchase lands for such purposes.

(6) Fix and determine the amount of grazing fees to be imposed on members or nonmembers for the purpose of paying leases and operating expenses and fix and determine the amount of assessments to be made on members on an animal unit basis for the purpose of acquiring lands by purchase, or for the purpose of constructing improvements in the state district.

(7) Specify the breed, quality, and number of male breeding animals which each member must furnish when stock is grazing in common in the state district.

(8) Employ and discharge employees, riders, and other persons necessary to properly manage the state district.

(9) Set up and maintain a reasonable reserve fund.

(10) Borrow money, and if necessary mortgage the physical assets of a state district to provide for operation and development, provided that at least eighty per cent (80%) of the permittee members of the state dis-



strict consent in writing to the borrowing and the borrowing has been approved by the department. This subsection does not confer power upon a state district to mortgage the property of the individual members of the district.

(11) Change the boundaries of a district, merge with another state district organized under this act, or subdivide.

(a) A merger may not be made unless consented to by a majority of the members of each merging state district and approved by the board after a hearing thereon before the department.

(b) A subdivision may not be made unless consented to by a majority of the members in the affected area and approved by the board after a hearing thereon before the department.

(12) Regulate the driving of stock over, across, into, or through the range, and collect fees therefor. A state district may impose sanitary provisions, regulations and practices.

(13) Undertake reseeding and other approved conservation and improvement practices of depleted range areas or abandon farm lands and enter into co-operative agreements with the federal government or any other person for the reseeding or conservation and improvement practices.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974.

eral government" in subsection (13); substituted "person" in subsection (13) for "party or parties"; and made numerous minor changes in style and phraseology.

#### Amendments

The 1974 amendment deleted "organized under this act" at the beginning of the section after "district"; substituted "department" in subsection (10) for "state grass conservation board"; substituted "board" for "commission" in subdivisions (11)(a) and (11)(b); added "after a hearing thereon before the department" to the end of subdivisions (11)(a) and (11)(b); deleted "or an agency thereof" after "fed-

#### Assessments

Grazing district bylaw providing for assessment against members owning or in control of livestock trespassing on district land was valid implementation of power granted to grazing district by subdivision 4 of this section. Appeal of Two Crow Ranch, Inc., 159 M 16, 494 P 2d 915.

**46-2313. Powers and duties of directors.** The directors of the state district shall manage and exercise the powers of the state district subject to its bylaws and to the regulation of the department as provided in this act.

History: En. Sec. 13, Ch. 208, L. 1939; amd. Sec. 43, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "commission"; and made a minor change in phraseology.

**46-2314. Membership in district.** (1) Membership in the district is limited to persons engaged in the livestock business who own or lease forage producing lands within or near the district, except that the agent of a person entitled to membership in the district may become a member in place of his principal. If an agent becomes a member his qualifications for membership and his obligations to and the privileges in the district shall be measured by those his principal would have had if he had elected to become a member. An agent and his principal may not both be members

of the district unless the agent has individual qualifications for membership which are separable from and independent of those of his principal. Permittee members only are entitled to vote on all issues submitted to a vote of the members. A permittee member has only one (1) vote. Voting by proxy may not be permitted. All members who possessed preferential grazing permits during the preceding grazing season or who possess such a permit at the time of voting shall be designated as permittee members.

(2) When a member disposes of a part of the lands or leases owned by him so that another person becomes the owner of the lands or leases and acquires the right to membership, then the rights and interest involved shall be determined by the directors of the state district with the approval of the department.

(3) Preferences or rights under this act through the creation of the district or the issuance of permits or preferences are statutory and do not create any vested right, title, interest or estate in or to the lands owned or controlled by the district excepting as herein provided.

**History:** En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment deleted "partnerships, corporations and associations" and "association, partnership or corporation"

after "persons" and "person," respectively, in the first sentence of subsection (1); substituted "department" at the end of subsection (2) for "commission"; inserted the subsection designations; and made minor changes in punctuation and phraseology.

**46-2315. Bylaws.** A state district incorporated under this act shall within sixty (60) days after its incorporation adopt bylaws approved by the department. The bylaws may be amended or revised with the approval of the department.

**History:** En. Sec. 15, Ch. 208, L. 1939; amd. Sec. 45, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "commission" in both sentences of this section.

**46-2316. District must lease available state land.** State land situated within the boundaries of a grazing district created under this act, not otherwise disposed of by the department of state lands, must be leased by the grazing district at a reasonable rental, when offered for lease to the officers of the grazing district by that department; however, the officers of the grazing district may appear or submit evidence in writing before the department of state lands and show reason and cause for a change in the rental. If there is cause, the department of state lands may reappraise the land in question. The department of natural resources and conservation shall require that all state districts comply with this section.

**History:** En. Sec. 17, Ch. 208, L. 1939; amd. Sec. 46, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment substituted "department of state lands" and "department"

in the first two sentences for "state board of land commissioners"; substituted "department of natural resources and conservation" in the last sentence for "grass conservation commission"; and made minor changes in phraseology.

**46-2317. Department to advise department of state lands and county commissioners.** The department may act in an advisory capacity to the

department of state lands and boards of county commissioners for the purpose of working out uniform plans for the use of lands lying within or without the boundaries of state districts, in conformity with recognized conservation and stabilization policies.

**History:** En. Sec. 17, Ch. 208, L. 1939; amd. Sec. 47, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment substituted the present caption for one which read "Commission to advise board of land commissioners and county commissioners"; sub-

stituted "department" at the beginning of the section for "Montana grass conservation commission"; substituted "department of state lands" for "state board of land commissioners"; substituted "state districts" for "grazing districts"; and made a minor change in phraseology.

**46-2318. Amending articles of incorporation.** (1) A state district may amend its articles of incorporation by a two-thirds (2/3) vote of all members present at any regular or special meeting of its members and the approval of the department; the only notice of the meeting which is necessary is the notice of meetings of members as required by the bylaws of the district. The amended articles of incorporation and bylaws shall be submitted to the department for approval. Upon approval, the department shall issue a certificate of approval. The amended articles of incorporation shall be filed by the secretary of state without charge, but may not be filed unless accompanied by the certificate of approval.

(2) Upon the filing of the amended articles with the secretary of state and the proper county clerk or clerks, the district possesses the same powers and shall be subject to the same obligations as if incorporated under this act.

**History:** En. Sec. 18, Ch. 208, L. 1939; amd. Sec. 48, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment deleted "Incorporated grazing associations must conform to this act" from the first part of the caption; inserted the subsection designations; deleted a former first sentence which read "All grazing associations incorporated under Chapter 66, Laws of 1933, of Chapter 195, Laws of 1935, shall within six months amend their articles of incorporation and their bylaws to conform with the provisions of this act"; substituted "A state district" at the beginning of subsection (1) for "Any district organ-

ized hereunder or any district or grazing association organized under prior laws as described in this section"; substituted "department" for "commission" throughout subsection (1); deleted "or association" at the end of the first sentence of subsection (1) after "district"; deleted "association or" in subsection (2) before "district"; deleted a sentence at the end of subsection (2) which read "Any association refusing to comply with the provisions of this section or failing to so comply within the time provided in this section may be dissolved by an order of the commission"; and made minor changes in style and phraseology.

#### 46-2319. Repealed.

##### Repeal

Section 46-2319 (Sec. 19, Ch. 208, L. 1939), relating to the Mizpah Pumpkin

Creek grazing district, was repealed by Sec. 208, Ch. 253, Laws of 1974.

**46-2322. Grazing preferences appurtenant to dependent commensurate property and commensurate property and method of transferring preferences to other lands.** (1) Grazing preferences run with and are appurtenant to the dependent commensurate and commensurate property upon which they are based. They are not subject to devise, bequest, attachment, execution, lease, sale, exchange, transfer, pledge, mortgage, or other proc-



ess, or transaction, except as provided in this section or in the bylaws of a state district. Upon application by a permittee, the state district with the approval of the department may allow a preference based on ownership or control of dependent commensurate or commensurate property to be transferred to other property of sufficient commensurability; however, in any transfer of preference from dependent commensurate or commensurate property controlled but not owned by the applicant, the applicant must have had control and use of the dependent commensurate or commensurate property and the preference appurtenant thereto for five (5) consecutive years and must have established and maintained the livestock operation upon which the dependency was established by use or priority immediately prior to the application for transfer. In addition, the transfer may not interfere with the stability of livestock operations or with proper range management and may not affect adversely the established local economy. A transfer may not be allowed without the written consent of the owner or owners and any encumbrances of the dependent commensurate or commensurate property from which the transfer is to be made, and a transfer is not effective until approved by the department. This section does not apply to trespass violations.

(2) When an application for transfer is presented to the board of directors of a state district, the secretary upon the direction of that board shall give notice thereof, setting forth in general the application and the time and place of a hearing thereon as fixed by the board. A copy of the notice shall be given or mailed to the applicant and shall be published for at least once a week for two (2) successive weeks prior to the hearing in a newspaper published or generally circulated within the district, and the notice shall also be posted for at least two (2) full weeks prior to the hearing in three (3) public places within the district. The date of hearing must be at least fifteen (15) days from the first publication of the notice. At the hearing the directors shall fully hear and determine the application and any objections thereto.

(3) Upon the allowance of a transfer under this section, the property from which the transfer is made loses its grazing preference to the extent of the preference transferred.

(4) All expenses involved under the application shall be borne by the applicant.

(5) When the land to which a preference is attached changes its control or ownership the preference changes with the land, and the person to which the control or ownership changes shall secure a nonuse permit or shall pay the usual grazing fees. If the person fails to secure a nonuse permit or refuses to pay the grazing fees, the preferences may be revoked by the state district. If a person controls but does not own land and does not secure a nonuse permit and refuses to pay grazing fees, the state district shall notify the owner of the land by registered mail that the preference attached to the land will be revoked unless the owner pays the usual grazing fees to the state district within sixty (60) days from the time of receipt of the notice. The state district may revoke the preference if the owner or mortgagor does not pay the fees or secure a nonuse permit.

(6) If a permittee fails to pay grazing fees or assessments levied by the state district, or fails to obtain a nonuse permit or violates any of the rules and regulations of the state district, the state district may notify the permittee and owner of the land by registered mail that the preference attached to the land will be revoked unless the grazing fees or assessments are paid or the permittee ceases to violate the rules and regulations laid down by the district within sixty (60) days from the time of receipt of the notice. The state district may revoke the preference if the permittee or owner fails to pay the charges or comply.

(7) When a preference is revoked, it is detached from the dependent commensurate or commensurate property to which it was formerly appurtenant, and it immediately shifts to the state district. The state district may then allocate it to either dependent commensurate or commensurate property in the manner provided by its bylaws.

(8) In all cases where notices are given permittees under this act by registered mail and addressed to the post-office address of the permittee as shown by the records of the state district, the notices shall be considered received by the permittee when deposited in the United States post office by the district or by the department.

**History:** En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974.

#### Amendments

The 1971 amendment deleted "owned or controlled by the permittee" following "transferred to other property" in the third sentence of the first paragraph; and made a minor change in punctuation.

The 1974 amendment inserted the subsection designations; substituted "depart-

ment" in two places in subsection (1) for "grass conservation commission"; inserted "for transfer" after "application" at the beginning of subsection (2); inserted "of directors of a state district" near the beginning of subsection (2) after "board"; substituted "state district" in subsection (8) for "grazing district"; substituted "department" at the end of subsection (8) for "commission"; and made numerous minor changes in style, punctuation and phraseology.

**46-2323. Subsequent lessees to compensate district for range improvements.** Subsequent lessees or owners of land shall compensate a state district for the value of range improvements constructed with the consent of the owner, upon lands leased by the state district. The value shall be the value at the expiration date of the lease. If the owner and the state district cannot agree as to the value, the state district may either remove or abandon the improvement. If the subsequent lessee and the state district cannot agree as to the value, it shall be fixed by the department.

**History:** En. Sec. 23, Ch. 208, L. 1939; amd. Sec. 50, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "commission"; and made minor changes in phraseology.

**46-2325. Dissolution of district.** A state district with the written consent of three-fourths ( $\frac{3}{4}$ ) of its permittee members may at any time request the board of natural resources and conservation to dissolve the state district. When a hearing thereon has been held before the department and the board's consent has been given, the directors shall distribute the assets of the state district, either in items of property or in cash or in both. Distribution shall first be made with the approval of the department to credi-

tors up to the amount of their claims. Distribution shall then be made with the approval of the department to permittee members upon the basis of their proportionate interest in the assets. If assets must be liquidated, the directors shall offer them for sale at public auction after publication of a notice of the sale once a week for two (2) successive weeks in a newspaper of general circulation within the state district. A final report of all dissolution proceedings shall be made to the department by the directors. Upon the approval of the report by the department, the board shall order the state district dissolved.

History: En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953; amd. Sec. 51, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment substituted "board of natural resources and conservation" in the first sentence for "commission"; substituted "When a hearing thereon has been held before the department and the board's consent" in the second sentence for "When such consent"; inserted "with

the approval of the department" in the third and fourth sentences; deleted a provision "that a distribution of any property must be made with the consent of the commission" from the end of the third and fourth sentences; substituted "department" in the last two sentences for "commission"; substituted "the board" in the last sentence for a reference to the commission; and made minor changes in style and phraseology.

### 46-2326. Running livestock at large or in herd, etc.

#### Assessments

In view of section 46-2327, grazing district was not limited to the remedies permitted by this section in case of trespassing livestock, but could provide by

its bylaws for assessments against its members controlling trespassing livestock. Appeal of Two Crow Ranch, Inc., 159 M 16, 494 P 2d 915.

### 46-2327. Remedies are supplemental.

#### Assessments

This section preserved grazing district's power to provide in its bylaws for assessments against members controlling tres-

passing livestock, despite the fact that section 46-2326 provides other remedies against trespass. Appeal of Two Crow Ranch, Inc., 159 M 16, 494 P 2d 915.

### 46-2328. Repealed.

#### Repeal

Section 46-2328 (Sec. 9, Ch. 199, L. 1945), a saving provision relative to privileges and immunities under the

Soldiers and Sailors Civil Relief Act of 1940, was repealed by Sec. 208, Ch. 253, Laws of 1974.

### 46-2330. Repealed.

#### Repeal

This section (Sec. 28, Ch. 208, L. 1939), relating to the state grass conservation

fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

46-2331. Fees may be imposed by department against districts. The department may impose fees against the several state grazing districts of the state in an amount not in excess of ten cents (\$.10) per animal unit, based upon the number of animal units per year for which the district grants permits, to defray expenses incurred by the department in carrying out its powers and duties under this act. These fees shall be held in the earmarked revenue fund, to be expended by order and direction of the department for the administration of the department's functions under this act. If a state district fails or refuses to pay the fee on or before the first



day of October of each year, and after the district is provided with a full report from the department of all moneys collected and expended by it for its fiscal year next preceding that date, the department may compel and levy collection and payment by writ of mandate or other appropriate remedy against the state district.

**History:** En. Sec. 29, Ch. 208, L. 1939; amd. Sec. 1, Ch. 241, L. 1961; amd. Sec. 156, Ch. 147, L. 1963; amd. Sec. 1, Ch. 20, L. 1971; amd. Sec. 53, Ch. 253, L. 1974.

#### Amendments

The 1963 amendment substituted "ear-marked revenue fund" for "state grass conservation fund, herein created" in the second sentence.

The 1971 amendment deleted from the end of the first sentence "and said state grass conservation commission \* \* \* when so collected"; deleted "When such appropriation by the state of Montana is repaid" from the beginning of the second sentence; substituted "These fees" at the beginning of the second sentence for "the

balance of such funds"; deleted "further" before "administration of the commission" in the latter part of the second sentence; deleted "and thereafter said commission shall be maintained by funds obtained from the livestock fees hereinbefore provided" from the end of the second sentence; and substituted "October" for "May" in the last sentence.

The 1974 amendment substituted "department" for "commission" throughout the section; inserted "in carrying out its powers and duties under this act" at the end of the first sentence; inserted "functions under this act" at the end of the second sentence; and made minor changes in style, punctuation and phraseology.

**46-2332. Range for wild game animals.** In each state district a sufficient carrying capacity of range shall be reserved for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district. The department may act in an advisory capacity to the department of fish and game in the protection of wildlife within the boundaries of all state districts. The department shall encourage the transfer of beaver from streams where they are doing damage to other streams where they are needed.

**History:** En. Sec. 30, Ch. 208, L. 1939; amd. Sec. 53, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment substituted "The department" at the beginning of the second and last sentences for "The Montana

grass conservation commission"; substituted "Department of fish and game" in the second sentence for "state fish and game commission"; substituted "state districts" at the end of the second sentence for "grazing districts"; and made a minor change in phraseology.

## CHAPTER 24—RENDERING OR DISPOSAL PLANTS—LICENSING—REGULATION

- Section 46-2401. Licensing of rendering or disposal plants.  
 46-2402. Power of department to adopt and enforce rules.  
 46-2403. Power of department to restrain operation of rendering plant.  
 46-2404. Power of department to revoke license of rendering plant.  
 46-2405. Power to administer oaths, subpoena witnesses, and receive evidence.  
 46-2406. Penalty for violation.  
 46-2407. Dead or fallen animal rendering plants—definitions.  
 46-2408. Identification tags.  
 46-2409. Dead or fallen animal records.  
 46-2411. Production of dead or fallen animal record on demand—animal not to be removed during transportation—investigation.  
 46-2412. Disposal of hides—inspection—filing of dead or fallen animal record.

**46-2401. Licensing of rendering or disposal plants.** (1) It is unlawful to operate in this state a rendering or disposal plant or establishment that is intended to be operated for the disposal of bodies or parts of bodies of

animals or fowl in any manner, except for human consumption, without first securing a license from the department of livestock.

(2) The license expires on December 31 of the year in which it is issued. A license fee of five dollars (\$5) shall be charged for licenses issued under this act.

(3) All license fees collected shall be paid into the general fund of this state.

**History:** En. Sec. 1, Ch. 148, L. 1949; amd. Sec. 159, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment inserted the numerical subsection designations at the

beginning of the paragraphs; substituted "department of livestock" for "livestock sanitary board" in subsection (1); and made minor changes in phraseology, punctuation and style.

**46-2402. Power of department to adopt and enforce rules.** The department may adopt and enforce rules or orders necessary for the supervision, control, and inspection of rendering or disposal plants or establishments, their standards and methods of operation and their sanitary conditions, and the supervision, control, and inspection of equipment of the plant, where the rendering or disposal plants or establishments are intended to be operated for the disposal of bodies, or parts of bodies, of dead animals or fowl in any manner, except for human consumption. Vehicles and equipment used for the transportation of these bodies, or parts of bodies, are subject to the rules or orders, adopted by the department which are applicable to the vehicles or equipment. This act does not apply to the slaughtering and handling of animals or fowl for human consumption.

**History:** En. Sec. 2, Ch. 148, L. 1949; amd. Sec. 160, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "livestock sanitary board" in the caption and in two places in the text of the section; substituted "adopt and

enforce rules" for "promulgate and enforce reasonable rules and regulations" in the caption; substituted "rules or orders" for "rules, regulations or orders" in two places in the text of the section; and made minor changes in phraseology and punctuation.

**46-2403. Power of department to restrain operation of rendering plant.** The department may restrain the operation of a rendering or disposal plant or establishment engaged in the collection or handling of the bodies, or parts of bodies, of dead animals or fowl, where the operation is carried on in violation of the laws of this state or the rules or orders of the department, after a hearing held on five (5) days' written notice of the hearing to the licensee. The restraining order may be issued without notice of hearing where, in the discretion of the department, the violation constitutes a menace to public health requiring immediate and summary abatement. The licensee may appeal to the district court, on giving written notice of appeal to the restraining authority within ten (10) days after service of the restraining order, whether the order is made on hearing or summarily. The written notice of appeal does not stay execution of the restraining order when the restraining order is issued without hearing to restrain a menace to public health requiring immediate and summary abatement. Where the restraining order is issued after a hearing, the

hearing before the district court is on the record, together with any additional evidence offered. Where the order is issued without hearing, the hearing before the district court is on evidence offered at the hearing. Where the appeal is from an order issued after hearing, the appellant shall pay the cost of the transcript, which must be filed not more than thirty (30) days from the date of filing the notice of appeal; however, the court may extend the time for filing the transcript in its discretion.

**History:** En. Sec. 3, Ch. 148, L. 1949; amd. Sec. 161, Ch. 310, L. 1974.

**Amendments**

The 1974 amendment substituted refer-

ences to "department" in the caption and throughout the section for references to "sanitary board" and "livestock sanitary board"; and made minor changes in phraseology and punctuation.

**46-2404. Power of department to revoke license of rendering plant.** A license to operate a rendering or disposal plant may be revoked at any time by the department when it determines that a person to whom the license is issued has failed to comply with any statute of this state or rules or orders of the department, and on hearing before the department, after ten (10) days' written notice. Service and filing of a notice of appeal to a district court stays execution of the order.

**History:** En. Sec. 4, Ch. 148, L. 1949; amd. Sec. 162, Ch. 310, L. 1974.

**Amendments**

The 1974 amendment substituted references to "department" in the caption and throughout the section for references to "livestock sanitary board"; deleted a reference to the authority of the state veter-

inary surgeon to revoke licenses in the first sentence; deleted a provision pertaining to the licensee's right to appeal to the district court; deleted a provision pertaining to the hearing in the district court; deleted a provision for payment of the costs and filing of the transcript by the appellant; and made minor changes in phraseology and punctuation.

**46-2405. Power to administer oaths, subpoena witnesses, and receive evidence.** Hearings held under this act, for either revocation of licenses or to restrain operation, shall be held by the department, and the department or its agent may administer oaths, subpoena witnesses, and receive evidence in order to carry out this act.

**History:** En. Sec. 5, Ch. 148, L. 1949; amd. Sec. 163, Ch. 310, L. 1974.

**Amendments**

The 1974 amendment substituted "de-

partment" for "livestock sanitary board" in two places and made minor changes in phraseology.

**46-2406. Penalty for violation.** Operation of a rendering or disposal plant or establishment without a license from the department, or operation of a rendering or disposal plant or establishment in violation of a restraining order, or after revocation of a license constitutes a misdemeanor, punishable by a fine of not less than fifty dollars (\$50) nor more than two hundred fifty dollars (\$250) for each day of illegal operation.

**History:** En. Sec. 6, Ch. 148, L. 1949; amd. Sec. 164, Ch. 310, L. 1974.

**Amendments**

The 1974 amendment substituted "de-

partment" for "livestock sanitary board" and made minor changes in phraseology and punctuation.

**46-2407. Dead or fallen animal rendering plants—definitions.** When used in this act:



(1) "Dead or fallen animal" means the carcass or dead body of a cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly, the continued existence of which would create a public nuisance and constitute a hazard to the public health, which is not killed for human consumption, and is to be salvaged for the purpose of obtaining the hide and grease or fat from the animal.

(2) "Licensed rendering plant" and "licensed renderer" mean a person, copartnership, association, or corporation which is engaged in the disposal of dead or fallen animals and which is licensed by the department.

History: En. Sec. 1, Ch. 87, L. 1949; amd. Sec. 165, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment changed the subdivision designations from small letters

to numerals; substituted "department" for "livestock sanitary board of the state of Montana" at the end of subdivision (2); and made minor changes in phraseology and punctuation throughout the section.

**46-2408. Identification tags.** Licensed rendering plants shall provide themselves with serially numbered metal identification tags of a size and design prescribed by the department and in a number series assigned by the department.

History: En. Sec. 2, Ch. 87, L. 1949; amd. Sec. 166, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted refer-

ences to "department" for references to "livestock commission of the state of Montana" and "secretary of the livestock commission."

**46-2409. Dead or fallen animal records.** When a licensed renderer or his agent receives a dead or fallen animal, he shall present to the person, corporation, or association which has requested him to remove the dead or fallen animal, a dead or fallen animal record. The record shall be on forms prescribed by the department and contain information the department may, by rule, require. The report shall be executed in quadruplicate, the original copy shall accompany the carcass and hide until the hide is officially inspected for marks and brands, the duplicate shall be retained by the licensed renderer for the time which the department in its discretion requires, the triplicate shall be filed within seven (7) days after its execution and without cost in the office of the county clerk and recorder of the county in which the animal is received by the licensed renderer or his agent, and the quadruplicate shall be retained by the person, corporation, or association which requested removal of the dead or fallen animal.

History: En. Sec. 3, Ch. 87, L. 1949; amd. Sec. 167, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment inserted the sec-

ond sentence; deleted a form for the dead or fallen animal record; substituted "department" for "livestock commission" in the last sentence; and made minor changes in phraseology and punctuation.

**46-2411. Production of dead or fallen animal record on demand—animal not to be removed during transportation — investigation.** A licensed renderer or his agent who has received a dead or fallen animal, on demand of a livestock inspector, sheriff, undersheriff, deputy sheriff, or other peace officer, shall produce for inspection of the officer, an executed dead or

fallen animal record identifying each dead or fallen animal which he is transporting when the demand is made. Failure to produce the executed dead or fallen animal record on demand constitutes a misdemeanor punishable, as provided in this act. Under no circumstances may a licensed renderer or his agent endanger the public health by removing or being required to remove any dead or fallen animals from the vehicle in which they are being transported until the vehicle arrives at a licensed rendering plant where the dead or fallen animal shall be handled and disposed of in conformity with the rules of the department. If a livestock inspector, sheriff, undersheriff, deputy sheriff, or other peace officer has probable cause to believe the dead or fallen animals being transported by a licensed renderer or his agent were obtained by a commission of a felony, he may take the licensed renderer or his agent, as well as the vehicle, into custody and proceed with the licensed renderer or his agent to the rendering plant of the licensed renderer, where inspection of marks and brands and immediate investigation shall be made.

**History:** En. Sec. 5, Ch. 87, L. 1949; amd. Sec. 168, Ch. 310, L. 1974.

provided" at the end of the second sentence; substituted "rules of the department" for "rules and regulations of the livestock sanitary board" at the end of the third sentence; and made minor changes in phraseology and punctuation.

#### **Amendments**

The 1974 amendment substituted "as provided in this act" for "as hereinafter

**46-2412. Disposal of hides—inspection—filing of dead or fallen animal record.** When a licensed renderer or his agent disposes of the hides from dead or fallen animals, the hides shall be handled and inspected for marks and brands in conformity with Title 46, chapter 11. The sheriff, deputy sheriff, person designated by the board of county commissioners, or the department who makes the inspection for marks and brands in conformity with Title 46, chapter 11, shall complete the original dead or fallen animal record which accompanies the hide by inserting his inspector's tag number. He shall file the completed original dead or fallen animal record without cost in the office of the county clerk and recorder, together with the duplicate certificate of inspection required to be filed under Title 46, chapter 11.

**History:** En. Sec. 6, Ch. 87, L. 1949; amd. Sec. 169, Ch. 310, L. 1974.

#### **Amendments**

The 1974 amendment substituted "Title 46, chapter 11" for "sections 46-1101, 46-1102, 46-1106 to 46-1111" in three places; substituted "department" for "livestock commission" in the second sentence; and made minor changes in phraseology and punctuation.

#### **Compiler's Notes**

The compiler substituted the reference to "Title 46, chapter 11" for an erroneous reference to "Title 46, chapter 26" in the second sentence.

## **CHAPTER 25—ARTIFICIAL INSEMINATION OF ANIMALS AND POULTRY**

Section 46-2505. Act to be administered by Montana department of livestock.  
46-2515. Only certain sires to be used for artificial insemination.

### **46-2501. Repealed.**

#### **Repeal**

Section 46-2501 (Sec. 1, Ch. 37, L. 1953), relating to purpose of the artificial in-

semination law, was repealed by Sec. 3, Ch. 102, Laws 1973.

**46-2504. Repealed.****Repeal**

Section 46-2504 (Sec. 4, Ch. 37, L. 1953), requiring a license to practice

artificial insemination, was repealed by Sec. 3, Ch. 102, Laws 1973.

**46-2505. Act to be administered by Montana department of livestock.** This act shall be administered by the department of livestock and in addition to any powers now conferred by law the department of livestock shall have the following powers and duties:

(a) To promulgate such reasonable rules, regulations, and orders not contrary to the provisions of this act, when required, as may be necessary for the proper administration of this act, specifically including, but not limited to, rules, regulations, and orders relating to the means for preservation of semen and the use of semen imported into the state of Montana from other states, territories, and possessions of the United States and foreign countries.

**History:** En. Sec. 5, Ch. 37, L. 1953; amd. Sec. 2, Ch. 102, L. 1973.

and (d); and redesignated former subdivision (e) as (a).

**Amendments**

The 1973 amendment substituted "department of livestock" for "livestock sanitary board" in the preliminary clause; deleted former subdivisions (a), (b), (c),

**Repealing Clause**

Section 3 of Ch. 102, Laws 1973 read "Sections 46-2501, 46-2504, 46-2506, 46-2507, 46-2508, 46-2509, 46-2510, 46-2511, 46-2512, 46-2513, and 46-2514, R. C. M. 1947, are hereby repealed."

**46-2506 to 46-2514. Repealed.****Repeal**

Sections 46-2506 to 46-2514 (Secs. 6 to 14, Ch. 37, L. 1953), relating to li-

censing and the practice of artificial insemination, were repealed by Sec. 3, Ch. 102, Laws 1973.

**46-2515. Only certain sires to be used for artificial insemination. (1)** All sires used for artificial insemination must be free from brucellosis, vibriosis, trichomoniasis, dourine, posthitis, pullorum disease, other transmissible, infectious, contagious diseases, transmissible hereditary malformations, and other detrimental or undesirable characteristics. Proof of fitness of these sires shall be provided to the department by the owner or parties providing the sires for artificial insemination.

(2) Semen imported into this state may not be used by any artificial inseminator until proof is made to the satisfaction of the department that the sire from which the semen was taken was free from the above-mentioned diseases.

**History:** En. Sec. 15, Ch. 37, L. 1953; amd. Sec. 1, Ch. 102, L. 1973; amd. Sec. 170, Ch. 310, L. 1974.

ment of livestock" for "livestock sanitary board" throughout the section.

**Amendments**

The 1973 amendment deleted "purity of breed" from the second sentence of the first paragraph and substituted "depart-

The 1974 amendment inserted the numerical subsection designations at the beginning of the paragraphs; substituted "department" for "department of livestock" throughout the section; and made minor changes in phraseology and punctuation.



## CHAPTER 26—REGULATION OF INDUSTRY TREATING OR FEEDING GARBAGE TO SWINE AND OTHER ANIMALS

- Section 46-2602. Licenses.  
 46-2603. Applications for licenses.  
 46-2604. Power to adopt rules.  
 46-2605. Entry of premises for inspection—keeping of records.  
 46-2606. Power of department and board to restrain operation of garbage feeder.  
 46-2607. Power to revoke license of garbage feeder.  
 46-2608. Power to administer oaths, subpoena witnesses, and receive evidence.  
 46-2609. Cooking or other treatment of garbage.  
 46-2610. Garbage originating on or removed from airplanes may not be treated or fed.

**46-2602. Licenses.** (1) It is unlawful to handle, prepare, cook, or otherwise treat garbage to feed to swine or other animals, or to feed garbage to swine or other animals, without first securing a license for that purpose from the department of livestock. One license, issued to the entrepreneur, corporation, or individual responsible for a particular garbage feeding enterprise covers all garbage feeders concerned with the enterprise. The license provided for in this section expires on December 31, of the year in which it is issued. A license fee of five dollars (\$5) shall be charged for all licenses issued under this act. All license fees collected shall be paid into the general fund of this state.

(2) This act does not apply to a person who feeds only his own household garbage to swine or other animals.

**History:** En. Sec. 2, Ch. 63, L. 1953; amd. Sec. 171, Ch. 310, L. 1974.

### Amendments

The 1974 amendment changed the subsection designations from small letters

to numerals; substituted "department of livestock" for "livestock sanitary board" at the end of the first sentence of subsection (1); and made minor changes in phraseology and punctuation.

**46-2603. Applications for licenses.** A person desiring to obtain a license to feed garbage to swine or other animals shall make a written application for the license to the department under the rules or orders prescribed by the department.

**History:** En. Sec. 3, Ch. 63, L. 1953; amd. Sec. 172, Ch. 310, L. 1974.

### Amendments

The 1974 amendment substituted "department under the rules or orders pre-

scribed by the department" for "livestock sanitary board in accordance with the rules, regulations or orders prescribed by said board applying to such applications" at the end of the section.

**46-2604. Power to adopt rules.** The department shall administer and enforce this act, and may adopt and enforce rules or orders necessary for the supervision, control, and inspection of persons who handle, prepare, cook, or otherwise treat garbage to feed to swine or other animals or who feed garbage to swine or other animals. The rules or orders shall apply to and govern the method of applying for a license, standards and methods of operation, sanitary conditions of premises where garbage is treated for feeding or fed, the control and inspection of equipment used to store, treat, or feed garbage and equipment, including vehicles used for the transportation of garbage.

**History:** En. Sec. 4, Ch. 63, L. 1953; amd. Sec. 173, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "The department" for "The livestock sanitary

board" at the beginning of the section; substituted references to "rules or orders" throughout the section for references to "rules, regulations or orders"; and made minor changes in phraseology and punctuation.

#### 46-2605. Entry of premises for inspection—keeping of records. (1)

An authorized representative of the department may enter at reasonable times on private or public property to inspect and investigate conditions relating to the treating of garbage to be fed, or the feeding of garbage, to swine or other animals.

(2) An authorized representative of the department may examine records or memoranda pertaining to the treatment or feeding of garbage to swine or other animals. The department may require maintenance of records it considers necessary, relating to the operation of equipment for and procedure of treating or feeding garbage to swine or other animals, and may require copies of the records to be submitted to the department periodically.

**History:** En. Sec. 5, Ch. 63, L. 1953; amd. Sec. 174, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment changed the subsection designations from small letters to

numerals; substituted references to "department" throughout the section for references to "livestock sanitary board"; and made minor changes in phraseology and punctuation.

**46-2606. Power of department and board to restrain operation of garbage feeder.** The department may restrain the operation of a licensed garbage feeder whose operation is carried on in violation of the laws of this state or the rules or orders of the department, after a hearing held on five (5) days' written notice of the hearing to the licensee. The restraining order may be issued without notice of hearing where, in the discretion of the department, the violation constitutes a menace to public or animal health requiring immediate and summary abatement. The licensee may appeal to the district court, on giving written notice of appeal to the restraining authority within ten (10) days after service of the restraining order, whether the order is made on hearing or summarily. The written notice of appeal does not stay execution of the restraining order when the restraining order is issued without hearing to restrain a menace to public health requiring immediate and summary abatement. Where the restraining order is issued after hearing, the hearing before the district court is on the record, together with additional evidence offered. Where the order is issued without hearing, the hearing before the district court shall be upon evidence offered before the court.

**History:** En. Sec. 6, Ch. 63, L. 1953; amd. Sec. 175, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "department and board" for "sanitary board" in the caption; substituted "The department may restrain" for "The livestock sanitary board or its authorized agent is hereby authorized and empowered to restrain" at the beginning of the section;

substituted "rules or orders of the department" for "rules, regulations, or orders of the livestock sanitary board" in the first sentence; substituted "in the discretion of the department" for "in the discretion of the sanitary board" in the second sentence; deleted provisions pertaining to payment of the costs and filing of the transcript by the appellant; and made minor changes in phraseology and punctuation.

**46-2607. Power to revoke license of garbage feeder.** The licenses to feed garbage to swine or other animals may be revoked at any time by the department when it determines that a person to whom the license is issued has failed to comply with the laws of this state, or rules or orders of the department, and on a hearing before the department, after ten (10) days' written notice. An appeal to the district court, stays execution of an order of the department revoking a license.

**History:** En. Sec. 7, Ch. 63, L. 1953; amd. Sec. 176, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment deleted reference to the "sanitary board" in the caption; substituted "revoked at any time by the department" for "revoked, at any time by the livestock sanitary board or the state veterinary surgeon"; substituted "rules or orders of the department" for "rules, regulations or orders of the live-

stock sanitary board"; substituted "hearing before the department" for "hearing before the revoking authority"; deleted a sentence pertaining to the licensee's right to appeal to the district court; deleted a provision pertaining to the hearing before the district court; deleted provisions for payment of the costs and filing the transcript by the appellant; and made minor changes in phraseology and punctuation.

**46-2608. Power to administer oaths, subpoena witnesses, and receive evidence.** The department or its agent may administer oaths, subpoena witnesses, and receive evidence in order to carry out this act.

**History:** En. Sec. 8, Ch. 63, L. 1953; amd. Sec. 177, Ch. 310, L. 1974.

#### Amendments

The 1972 amendment deleted "Hearings held under this act, for either revocation

of licenses or to restrain operation, shall be held by the livestock sanitary board or its duly authorized agent" at the beginning of the section; substituted "department" for "livestock sanitary board"; and made minor changes in phraseology.

**46-2609. Cooking or other treatment of garbage.** All garbage, regardless of previous processing, shall, before being fed to swine or other animals, be thoroughly heated to at least 212° F. for at least thirty (30) minutes, unless treated in some other manner which is approved in writing by the department as being equally effective for the protection of public and animal health.

**History:** En. Sec. 9, Ch. 63, L. 1953; amd. Sec. 178, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "livestock sanitary board" and made minor changes in phraseology.

**46-2610. Garbage originating on or removed from airplanes may not be treated or fed.** Garbage originating on or removed from airplanes landing in this state may not be treated for feeding or be fed to swine or other animals. The powers granted in section 46-2605 to the department to enter on private or public property for the purpose of inspecting and investigating conditions relating to the treating of garbage to be fed to swine or other animals or the feeding of garbage to swine or other animals include the inspection and investigation of garbage disposal methods employed at airports and all facilities at airports and aircraft.

**History:** En. Sec. 10, Ch. 63, L. 1953; amd. Sec. 179, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "to

the department" for "to representatives of livestock sanitary board" in the second sentence and made minor changes in phraseology and punctuation.



## CHAPTER 27—COUNTY LIVESTOCK PROTECTIVE COMMITTEES

- Section 46-2703. Powers and duties of committee.  
 46-2705. Special livestock deputy—duties—compensation.  
 46-2706. Discontinuing county livestock protective committee.

**46-2703. Powers and duties of committee.** The county livestock protective committee shall advise, assist, and co-operate with the department of livestock, the board of county commissioners, the sheriff and all other public officials or police officers who have duties pertaining to hide and brand inspection, apprehension of livestock rustlers, the prevention of rustling, enforcement of laws governing the movement and sale of livestock, the treatment and prevention of livestock diseases, and other matters which are of interest and value to the livestock industry in the county.

**History:** En. Sec. 3, Ch. 168, L. 1953; department of livestock" for "Montana livestock commission" and made minor  
 amd. Sec. 180, Ch. 310, L. 1974. changes in phraseology and punctuation.

**Amendments**

The 1974 amendment substituted "de-

**46-2705. Special livestock deputy—duties—compensation.** The county livestock protective committee may recommend to the board of county commissioners the appointment of a special livestock deputy, satisfactory to the department and the sheriff, whose duties are to assist the department and the sheriff in the enforcement of hide and brand inspection laws, laws governing the movement and sale of livestock and the treatment and prevention of livestock diseases, laws pertaining to the apprehension of livestock rustlers and the prevention of rustling, and other laws which are of particular concern to the livestock industry of the county, particularly as regards cattle. The special livestock deputy may receive a commission from the department and appointment as a deputy from the sheriff of the county, and shall give the bond for the faithful performance of his duties as required from officers performing similar duties. The special livestock deputy shall receive compensation for his services and for mileage traveled in the performance of his duties in an amount set by the board of county commissioners, on the recommendation of the committee, to be paid from the stockmen's special deputy fund and from the county general fund in the proportions set by the board of county commissioners.

**History:** En. Sec. 5, Ch. 168, L. 1953; ences to "department" throughout the  
 amd. Sec. 181, Ch. 310, L. 1974. section for references to "Montana livestock commission" and made minor

**Amendments**

The 1974 amendment substituted refer- changes in phraseology and punctuation.

**46-2706. Discontinuing county livestock protective committee.** Upon receipt of a petition or petitions signed as provided in section 46-2701, the board of county commissioners shall discontinue said county livestock protective committee, provided, however, that such action in discontinuing said committee shall not affect any levy made prior to the receipt of such petition or petitions, and the proceeds of any levy made shall be used for the purposes as in this act set out, and further providing that no district shall be discontinued so long as there is any outstanding indebtedness against it.

History: En. Sec. 6, Ch. 168, L. 1953;  
amd. Sec. 2, Ch. 204, L. 1967.

#### Amendments

The 1967 amendment substituted

"shall" for "may" before "discontinue";  
and added "and further providing \* \* \*  
indebtedness against it" at the end of this  
section.

### CHAPTER 28—CATTLE PROTECTIVE DISTRICTS

- Section 46-2801. Formation of districts in two or more counties authorized—petition of cattle owners—declaration by county commissioners.  
46-2802. Selection of cattle protective committee members.  
46-2803. Powers and duties of protective committees.  
46-2804. Tax levy—deposit of proceeds.  
46-2805. Removal of area from protective district—discontinuance of district—levy saved.  
46-2806. Formation of county district authorized—petition of cattle owners—declaration by county commissioners.  
46-2807. Selection of cattle protective committee members.  
46-2808. Powers and duties of protective committees.  
46-2809. Tax levy—deposit of proceeds.  
46-2810. Discontinuance of district—levy saved.

**46-2801. Formation of districts in two or more counties authorized—petition of cattle owners—declaration by county commissioners.** A cattle protective district embracing all or parts of two or more counties may be formed upon the filing of petitions by the cattle growers of such counties with the boards of county commissioners of each county to be wholly or partially included in the district. Such petitions must be signed by at least fifty-one per cent (51 %) of the cattle owners owning fifty-five per cent (55 %) of cattle for the protection of which the district is to be formed residing within the area designated as part of the district in each of the counties affected. Upon receipt of such a petition each board of county commissioners must within thirty (30) days declare the designated portion of its county a part of such cattle protective district and the district shall be formed immediately upon the action of the last board of county commissioners to act.

History: En. Sec. 1, Ch. 181, L. 1963.

#### Title of Act

An act to authorize the creation and operation of cattle protective districts embracing all or portions of two or more

counties, providing for the appointment of district cattle protective committees, providing for the powers, duties and financing of such cattle protective districts.

**46-2802. Selection of cattle protective committee members.** Each county wholly or partially included in such district shall be entitled to three (3) members of the district cattle protective committee who shall be chosen in the same manner as members of county cattle protective committees under section 46-2701, R.C.M. 1947.

History: En. Sec. 2, Ch. 181, L. 1963.

**46-2803. Powers and duties of protective committees.** District cattle protective committees shall be organized and have the same powers and duties as the county cattle protective committees organized under the provisions of Chapter 27, Title 46, R.C.M. 1947.

History: En. Sec. 3, Ch. 181, L. 1963.

**46-2804. Tax levy—deposit of proceeds.** Said district cattle protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed twenty-five cents (25¢) per head on all assessable cattle in the district on the first Monday of March and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property, and when collected to be deposited in the county treasury of one of the counties in the district, to be selected by the district cattle protective committee, in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal or private sources for the purposes of this act.

History: En. Sec. 4, Ch. 181, L. 1963.

**46-2805. Removal of area from protective district—discontinuance of district—levy saved.** Upon receipt of a petition or petitions signed in the same number and the same manner as the petition to form the district provided for in section 46-2801 of this act, a board of county commissioners shall remove the area in its county from the cattle protective district or the boards of county commissioners of all of the counties affected may discontinue the entire cattle protective district, provided, however, that such action in discontinuing said district or part of district shall not affect any levy made prior to the receipt of such petition or petitions, and the proceeds of any levy made shall be used for the purposes as in this act set out, and further providing, that no district or portion of such district shall be discontinued so long as there is any outstanding indebtedness against it.

History: En. Sec. 5, Ch. 181, L. 1963; amd. Sec. 1, Ch. 204, L. 1967.

#### Amendments

The 1967 amendment substituted "shall"

for "may" before "remove the area"; added "and further providing \* \* \* indebtedness against it" at the end of the section; and made a minor style change.

**46-2806. Formation of county district authorized—petition of cattle owners—declaration by county commissioners.** A cattle protective district embracing part of one county in the state of Montana may be formed upon the filing of a petition by cattle growers within said district with the board of county commissioners in said county. Such petition must be signed by at least fifty-one per cent (51 %) of the cattle owners owning fifty-five per cent (55 %) of the cattle for the protection of which the district is to be formed residing within the area designated. Upon receipt of such petition, the board of county commissioners must within thirty (30) days declare the designated portion of its county a cattle protective district and the district shall be formed immediately thereafter.

History: En. Sec. 1, Ch. 91, L. 1965.

#### Title of Act

An act relating to the formation of a cattle protective district within any

county in the state of Montana and providing for its formation and for its powers and duties, including organization, tax levy, and discontinuance.

**46-2807. Selection of cattle protective committee members.** Each cattle protective district shall be entitled to three (3) members, who shall



be chosen in the same manner as members of a county cattle protective committee under section 46-2701, R. C. M., 1947.

History: En. Sec. 2, Ch. 91, L. 1965.

**46-2808. Powers and duties of protective committees.** Such district cattle protective committees shall be organized and have the same powers and duties as the county cattle protective committees organized under the provisions of chapter 27, Title 46, R. C. M., 1947.

History: En. Sec. 3, Ch. 91, L. 1965.

**46-2809. Tax levy—deposit of proceeds.** Said district cattle protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed twenty-five cents (25¢) per head on all assessable cattle in the district on the first Monday of March and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property, and when collected to be deposited in the county treasury in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal or private sources for the purposes of this act.

History: En. Sec. 4, Ch. 91, L. 1965.

**46-2810. Discontinuance of district—levy saved.** Upon receipt of a petition or of petitions signed in the same number and in the same manner as the petition to form the district, as herein provided, the board of county commissioners shall discontinue the cattle protective district, provided, however, that such action in discontinuing said district shall not affect any levy made prior to the receipt of such petition or petitions, and the proceeds of any levy made shall be used for the purposes as in this act set out. No district or portion of such district shall be discontinued so long as there is any outstanding indebtedness against it.

History: En. Sec. 5, Ch. 91, L. 1965;  
amd. Sec. 3, Ch. 204, L. 1967.

#### Amendments

The 1967 amendment substituted "shall" for "may" before "discontinue"; and added the last sentence.

## CHAPTER 29—LIVESTOCK DEALERS

- Section 46-2901. Definitions.  
 46-2902. Prohibited conduct.  
 46-2903. Licenses.  
 46-2903.1. Refusal of license.  
 46-2903.2. Suspension and revocation of license.  
 46-2904. Bonds.  
 46-2905. Inspection of records.  
 46-2906. Penalties.  
 46-2907. Powers and duties of department.

**46-2901. Definitions.** When used in this chapter:

(1) "Person" means an individual, partnership, corporation, association, or other form of business enterprise;

- (2) "Livestock" means cattle, sheep, swine, horses, mules, and goats;
- (3) "Livestock dealer" means a person who buys livestock for his own account for purposes of resale or slaughter; or for the account of others; or for or on behalf of any dealer. The term does not include a farmer or rancher who buys or sells livestock in the ordinary course of his farming or ranching operation; and
- (4) "Meat packer" means livestock dealer in this chapter.

History: En. Sec. 1, Ch. 414, L. 1971;  
amd. Sec. 182, Ch. 310, L. 1974.

#### Amendments

#### Title of Act

An act to provide for licensing of livestock dealers and establishing the procedure, rules and regulations therefor.

The 1974 amendment changed the subdivision designations from small letters to numerals; substituted "this chapter" for "this act" in two places; and made minor changes in phraseology and punctuation.

**46-2902. Prohibited conduct.** It is unlawful for any person to:

- (1) Carry on the business of a livestock dealer without a valid and effective license issued by the department of livestock under section 46-2903;
- (2) Carry on the business of a livestock dealer without filing and maintaining a valid and effective surety bond under section 46-2904;
- (3) Carry on the business of a livestock dealer while his current liabilities exceed his current assets; or
- (4) Willfully make or cause to be made a false entry or statement of fact in an application, financial statement, or report filed with the department under this chapter.

History: En. Sec. 2, Ch. 414, L. 1971;  
amd. Sec. 183, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment changed the subdivision designations from small letters to numerals; substituted "department of

livestock" for "livestock commission" in subdivision (1); substituted "department under this chapter" for "livestock commission under this act" at the end of subdivision (4); and made minor changes in phraseology and punctuation.

**46-2903. Licenses.** (1) A person desiring to be licensed as a livestock dealer shall file annually with the department of livestock before July 1, an application for a license to transact business on a form prescribed by the department. The application shall contain the following information:

- (a) The nature of the business to be conducted by the applicant;
- (b) The name or names of persons applying for the license, together with their address and permanent residence;
- (c) The full name of each member, if the applicant is a firm, association, or partnership or the names of the officers if the applicant is a corporation;
- (d) The post office and principal place of business of the applicant;
- (e) If the applicant is a foreign corporation, its principal place of business, outside the state, the name of the state in which it is incorporated, and that it has complied with the laws of this state relating to foreign corporations and its right to do business in this state;

(f) A copy of the financial statement showing current assets and current liabilities, as submitted to the bonding company to secure a bond under this chapter.

(2) With the filing of an application for license, the applicant shall submit to the department a fee of twenty-five dollars (\$25).

(3) When an applicant has paid the fee, the department, except as otherwise provided in this section, shall issue to the applicant a license which entitles the licensee to engage in the business specified in his application for a period of one (1) year, unless the license is suspended, revoked, or terminated under this chapter.

(4) A license shall be posted in a conspicuous place in or at the place of business of the licensee for inspection by any person. A licensee under this chapter shall be issued a pocket card containing the license number of the applicant and his authority as a livestock dealer and the card shall be carried, maintained, and displayed on demand as authority as a licensed livestock dealer.

(5) All fees provided for under this chapter shall be paid into the state treasury, and shall be placed by the state treasurer to the credit of the department.

(6) A license issued under this chapter automatically terminates on June 30 following the issuance of the license, unless the annual fee has been paid, and a license automatically terminates upon termination of the surety bond covering the licensed operation.

**History:** En. Sec. 3, Ch. 414, L. 1971; amd. Sec. 184, Ch. 310, L. 1974.

#### **Amendments**

The 1974 amendment changed the subsection designations from small letters to numerals; changed the subdivision designations from numerals to small letters in subsection (1); substituted references to "department of livestock" and "department" throughout the section for refer-

ences to "livestock commission"; substituted references to "this chapter" throughout the section for references to "this act"; deleted former subsection (b), enumerating grounds for refusal of a license (see section 46-2903.1); deleted former subsection (c), pertaining to procedure for suspension and revocation of a license (see section 46-2903.2); and made minor changes in phraseology and punctuation.

**46-2903.1. Refusal of license.** The department shall refuse to issue or renew a license if the applicant:

(1) Has not filed a surety bond in the form and amount required under section 46-2904;

(2) Has not satisfactorily demonstrated that his current assets exceed his current liabilities;

(3) Has been found by the department to have failed to pay, without reasonable cause, obligations incurred in connection with livestock transactions;

(4) Has violated the livestock laws of this state or of the United States;

(5) Has practiced fraud in connection with the buying or receiving of animals or the selling, exchanging, or negotiating the sale of livestock or the weighing of livestock;

(6) Has failed to keep records of all purchases and sales or refused to grant inspection of the records by the department;



(7) Has been suspended by the order of the secretary of agriculture of the United States department of agriculture under provisions of the Packers and Stockyards Act, 1921, as amended 7 U.S.C. section 181, et seq.; or

(8) Has failed to comply with an order of the livestock department.

History: En. 46-2903.1 by Sec. 185, Ch. 310, L. 1974.

**46-2903.2. Suspension and revocation of license.** (1) When the department finds that a livestock dealer has violated subsection (2), (3), or (4) of section 46-2902, section 46-2903.1, or section 46-2905, the department may, by order, suspend the license of the offender for a period not to exceed one (1) year. If the violation is repeated, the department may, by order, permanently revoke the license of the offender.

(2) Before a license issued under this chapter may be suspended or revoked, a hearing shall be given the licensee, before the department, to determine whether the license should be suspended or revoked. The licensee shall be given notice of the time and place of the hearing. The hearing shall be held not less than ten (10) days nor more than fifteen (15) days after the mailing of the notice. At the hearing, the department shall take and receive evidence, under oath, with respect to the complaint, and upon the evidence received shall promptly dismiss the proceedings or revoke or suspend the license. On an adverse ruling, the licensee may appeal to the district court in the county where his principal place of business is located.

History: En. 46-2903.2 by Sec. 186, Ch. 310, L. 1974.

**46-2904. Bonds.** (1) A livestock dealer applying for a license under this chapter shall file with the department and maintain a fully executed duplicate of a valid and effective bond in the form and amount set forth in this section, or if he is registered and bonded under the Packers and Stockyards Act, 1921 (7 U.S.C. section 181 et seq.), he shall file a statement in the form prescribed by the department which shows he is maintaining a valid and effective bond or its equivalent under the Packers and Stockyards Act.

(2) The amount of the livestock dealer bond filed with the department may not be less than five thousand dollars (\$5,000) or a larger amount as the department may determine. The bond shall contain the following conditions:

"This bond is conditioned on the principal paying when due to the persons entitled thereto the purchase price of all livestock purchased by the principal for his own account or for the accounts of others, and conditioned on the principal safely keeping and properly disbursing all funds, if any, which come into his hands for the purpose of paying for livestock purchased for the accounts of others."

(3) Each livestock dealer bond filed with the department shall contain provisions that a person damaged by failure of the principal to comply with the condition clause of the bond may maintain suit to recover on the bond, and at least thirty (30) days' notice in writing shall be given to the department by the party terminating the bond.

**History:** En. Sec. 4, Ch. 414, L. 1971; amd. Sec. 187, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment changed the subsection designations from small letters to

numerals; substituted "this chapter" for "this act" in the first sentence; substituted references to "department" throughout the section for references to "livestock commission"; and made minor changes in phraseology and punctuation.

**46-2905. Inspection of records.** A livestock dealer shall keep and maintain records suitable to disclose all purchases and sales of livestock. A livestock dealer shall, during all reasonable times, give the department access to and let the department copy all of the records relating to his business.

**History:** En. Sec. 5, Ch. 414, L. 1971; amd. Sec. 188, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "give the department access to and let the de-

partment copy all of the records relating to his business" for "submit any authorized agent of the livestock commission to have access to and to copy any and all of such records relating to his business."

**46-2906. Penalties.** A livestock dealer who violates subsection (1) or (4) of section 46-2902, is guilty of a misdemeanor.

**History:** En. Sec. 6, Ch. 414, L. 1971; amd. Sec. 189, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment rewrote this section which read: "Any livestock dealer who violates the provisions of section (a)

or (d) of section 2 of this act, shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than six (6) months, or a fine of not more than five hundred dollars (\$500) or both such imprisonment and fine."

**46-2907. Powers and duties of department.** The department shall enforce this chapter, and adopt rules necessary or desirable to carry out this chapter.

**History:** En. Sec. 7, Ch. 414, L. 1971; amd. Sec. 190, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "livestock commission" in the caption and the text of the section; substituted "this chapter" for "this act" in two places; and made minor changes in phraseology.

### 46-2908. Repealed.

#### Repeal

Section 46-2908 (Sec. 9, Ch. 414, L. 1971), relating to the citation of the "Live-

stock Dealer Licensing Act," was repealed by Sec. 201, Ch. 310, Laws of 1974.

## CHAPTER 30—UNLAWFUL DRIVING OF LIVESTOCK

Section 46-3001 to 46-3005. [Transferred from Title 94.]

46-3006. Stolen livestock—seizure and confiscating of vehicle used to transport—payment of prior liens and disposal of proceeds.

46-3007, 46-3008. [Transferred from Title 94.]

### 46-3001 to 46-3005. [Transferred from Title 94.]

#### Compiler's Notes

These sections were originally numbered 94-3567 to 94-3569, 94-35-200, and 94-35-204. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted

here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
46-3001	94-3567
46-3002	94-3568
46-3003	94-3569
46-3004	94-35-200
46-3005	94-35-204

**46-3006. Stolen livestock—seizure and confiscating of vehicle used to transport—payment of prior liens and disposal of proceeds.** The officer making the sale, after deducting the expenses of keeping the property and the cost of the sale, so far as the balance of sale proceeds permit, shall pay all liens, according to their priorities, which are established, by intervention or otherwise in the proceedings, as being bona fide and as having been created without the lienor having any notice or reasonable cause to believe that the vehicle was being or was to be used for the illegal transportation, and shall pay the balance of the proceeds to the treasurer of this state to be credited to the department of livestock fund.

**History:** En. Sec. 2, Ch. 80, L. 1931; Sec. 94-35-205, R. C. M. 1947; redes. 46-3006 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 200, Ch. 310, L. 1974.

section and made minor changes in phraseology.

#### **Repealing Clause**

Section 201 of Ch. 310, Laws 1974 read "Sections 3-24-133, 27-106, 46-101 through 46-103, 46-107, 46-201, 46-205, 46-401 through 46-415, 46-610, 46-805, 46-807, 46-1702, 46-2908, 82-2301, 82A-1302, 82A-1304, 82A-1305 are repealed."

#### **Amendments**

The 1974 amendment substituted "department of livestock fund" for "livestock commission fund" at the end of the

#### **46-3007, 46-3008. [Transferred from Title 94.]**

##### **Compiler's Notes**

These sections were originally numbered 94-35-206 and 94-35-207. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections

are not reprinted here but may be found in bound Volume Eight as follows:

<b>New Sec.</b>	<b>Vol. 8</b>
46-3007	94-35-206
46-3008	94-35-207



## TITLE 47—LOANS

Chapter 1. Loans for use or exchange—loan of money, 47-124.

2. Consumer Loan Act, 47-202, 47-204, 47-205, 47-210, 47-211, 47-214 to 47-216.

### CHAPTER 1—LOANS FOR USE OR EXCHANGE—LOAN OF MONEY

Section 47-124. Legal interest.

#### 47-101. (7702) Loan defined.

##### Cross-References

Retail installment sales, secs. 74-601 et seq.

#### 47-122. (7723) Interest defined.

##### Retail Installment Sales Act

The finance charges provided for in the Retail Installment Sales Act are not compensation for the forbearance of money within the statutory definition of interest in this section since, at the time of purchase, the debt created is a time obligation and is not then due because of the express provisions of the revolving charge account agreement which allows the customer to pay for the purchases in installments over a period of time; the "time price" doctrine applies to revolving charge account sales even though they are gov-

erned by the terms of one price agreement covering all future purchases from time to time rather than a series of identical individual agreements entered into at the time of each individual sale. *Cecil v. Allied Stores Corp.*, — M —, 513 P 2d 704.

##### Retail Installment Finance Charges

Finance charges under the Retail Installment Sales Act are not compensation for the forbearance of money within the definition of interest in this section. *Cecil v. Allied Stores Corp.*, — M —, 513 P 2d 704.

**47-124. (7725) Legal interest.** Except as otherwise provided by the Uniform Commercial Code: Unless there is an express contract in writing, fixing a different rate, or a law or ordinance or resolution of a public body fixing a different rate on its obligations, interest is payable on all moneys at the rate of six per cent (6%) per annum after they become due on any instrument of writing, except a judgment, on an account stated, and on moneys lent or due on any settlement of accounts from the date on which the balance is ascertained, and on moneys received to the use of another and detained from him. In the computation of interest for a period of less than one (1) year, three hundred and sixty-five (365) days are deemed to constitute a year.

**History:** En. Sec. 2585, Civ. C. 1895; amd. Sec. 1, p. 125, L. 1899; re-en. Sec. 5211, Rev. C. 1907; re-en. Sec. 7725, R. C. M. 1921; amd. Sec. 1, Ch. 144, L. 1933; amd. Sec. 11-130, Ch. 264, L. 1963; amd. Sec. 38, Ch. 234, L. 1971. Cal. Civ. C. Sec. 1917.

##### Amendments

The 1963 amendment inserted "Except

as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

The 1971 amendment inserted "or a law or ordinance or resolution of a public body fixing a different rate on its obligations" after "fixing a different rate" near the beginning of the section.

#### 47-125. (7726) Same—any rate not exceeding ten per cent, etc.

##### Retail Installment Sales Contracts

In a diversity action to recover the bal-

ance due on a note and conditional sales contract executed and delivered by de-

pendants to a North Dakota corporation and assigned by it to plaintiff, where defendants contended that the rate of interest charged them pursuant to the Montana Retail Installment Sales Act, section 74-608 was 16.3%, which exceeded the maximum rate of 10% permitted by this section and constituted a special law regulating the rate of interest on money, proscribed by section 26, article V of the constitution, the federal court applied the abstention doctrine and postponed further action until the issue was determined by the supreme court of Montana. B-W Ac-

ceptance Corp. v. Torgerson, 234 F Supp 214, 216.

#### Sale of Assets

Where plaintiffs advanced the money and purchased the assets of a business, and at the same time entered an agreement for future resale of a part of the business to defendant, the entire transaction was a sale and contract of sale, rather than a loan, so that the difference in sale prices was not interest subject to the usury statute. Favero v. Wynacht, 140 M 358, 371 P 2d 858, 867.

### 47-126. (7727) Penalty for usury—action to recover, etc.

#### References

Favero v. Wynacht, 140 M 358, 371 P 2d 858, 867.

## CHAPTER 2—CONSUMER LOAN ACT

### Section 47-202. Definitions.

47-204. Scope—exemptions—invalidity of contracts in violation.

47-205. When loans in excess of \$1,000 by licensee prohibited—supplementary license to make loans up to \$2,500.

47-210. Rates and charges—refunds—past due amounts—excess charges, effect.

47-211. Installment payment—contract period.

47-214. Insurance written with loans—types and limitation thereon—delivery of insurance policy.

47-215. Investigations, when—who may be investigated.

47-216. Annual examinations—cost of examinations—limitations.

### 47-201. Act, how cited.

#### Cross-References

Retail installment sales, secs. 74-601 et seq.

**47-202. Definitions.** Unless otherwise clearly indicated by the context, the following words when used in this act, for the purposes of this act, shall have the meanings respectively ascribed to them in this section:

(a). \* \* \* [Same as parent volume.]

(b) "License" shall mean one or both of the licenses provided for by this act.

(c) and (d). \* \* \* [Same as parent volume.]

(e) "Consumer type loan business" shall mean the business of making loans of two thousand five hundred dollars (\$2,500) or less generally repayable in substantially equal installments.

**History:** En. Sec. 2, Ch. 283, L. 1959; amd. Sec. 1, Ch. 233, L. 1971.

#### Amendments

The 1971 amendment substituted "one

or both of the licenses" for "the license" in subdivision (b); and increased the maximum loan specified in subdivision (e) from \$1,000 to \$2,500.

### 47-203. Office of consumer loan commissioner, etc.

#### Cross-References

Commissioner's office abolished and functions transferred, sec. 82A-402(2).

**47-204. Scope—exemptions—invalidity of contracts in violation.**

(a) Scope; prohibiting engaging in the business of making loans of two thousand five hundred dollars (\$2,500) or less, except after having obtained a license; exemptions. On or after July 1, 1959, no person shall engage in the business of making loans or advances of money on credit in amounts of two thousand five hundred dollars (\$2,500) or less and contract for, charge, or receive directly or indirectly on or in connection with any such loan or advance, any charges whether for interest, compensation, consideration, or expense which in the aggregate are greater than ten per cent (10%) per annum, except as provided in and authorized by this act. A person doing business under the authority of this state or the United States relating to banks, trust companies, savings or building and loan associations, credit unions, Morris Plan companies, or a person engaged in business as a licensed pawnbroker, or any person who shall extend credit in connection with the sale of a commodity shall not become a licensee under this act, nor shall any of the provisions of this act apply to any such exempted person.

(b) and (c). \* \* \* [Same as parent volume.]

**History:** En. Sec. 4, Ch. 283, L. 1959; amd. Sec. 2, Ch. 233, L. 1971.

**Amendments**

The 1971 amendment increased the maximum loan specified in subsection (a)

from \$1,000 to \$2,500; deleted "relating to licensees" after "provisions of this act" near the end of subsection (a); and deleted "who is not licensed hereunder" from the end of subsection (a).

**47-205. When loans in excess of \$1,000 by licensee prohibited—supplementary license to make loans up to \$2,500.** No licensee under the provisions of this act shall lend money in a total sum greater than one thousand dollars (\$1,000) to any borrower or to any borrower and spouse except under the following circumstances and for the following charges: When any person holding a license provided for in section 47-206 desires to make loans for any amount in excess of one thousand dollars (\$1,000) but not exceeding two thousand five hundred dollars (\$2,500) the holder of such license provided for in section 47-206 may apply to the commissioner for a supplementary license and pay therefor an additional license fee of seventy-five dollars (\$75) per calendar year or one-half ( $\frac{1}{2}$ ) of said sum for any period less than six (6) months. The commissioner shall grant, on application, a supplementary license to a holder of a license provided for in section 47-206. Section 47-209 shall be applicable as to time of payment of supplementary license fee and penalty for failure to pay the same. The holder of a supplementary license may contract for and receive charges at rates authorized for licensees in section 47-210 for the first one thousand dollars (\$1,000) of the principal amount of any loan and may contract for and receive charges at rates not in excess of ten dollars (\$10) per year per one hundred dollars (\$100) on that part of the principal amount of any loan exceeding one thousand dollars (\$1,000) but not exceeding two thousand five hundred dollars (\$2,500). Said charges shall be computed at the applicable rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. Said charges shall be added to



the principal of the loan and shall not be discounted or deducted therefrom nor paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day shall be considered one-thirtieth ( $1/30$ ) of a month. Provisions of section 47-210 relating to refunds, fees and charges and the other provisions of this act not inconsistent with this section shall be applicable to loans made under authority of a supplementary license.

**History:** En. Sec. 5, Ch. 283, L. 1959; amd. Sec. 3, Ch. 233, L. 1971.

#### Amendments

The 1971 amendment added "or to any

borrower and spouse except under the following circumstances and for the following charges" at the end of the first sentence, and added everything after the first sentence.

**47-210. Rates and charges—refunds—past due amounts—excess charges, effect.** (a) Maximum rate of charge. Every licensee hereunder may contract for and receive, on any loan of money not exceeding one thousand dollars (\$1,000) in principal amount, charges at rates not in excess of twenty dollars (\$20) per year per one hundred dollars (\$100) on that part of the principal amount of the loan not exceeding three hundred dollars (\$300); sixteen dollars (\$16) per year per one hundred dollars (\$100) on that part of the principal amount of the loan exceeding three hundred dollars (\$300) but not exceeding five hundred dollars (\$500), and twelve dollars (\$12) per year per one hundred dollars (\$100) on that part of the principal amount of the loan in excess of five hundred dollars (\$500) but not exceeding one thousand dollars (\$1,000). Said charges shall be computed at the aforesaid rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. Said charges shall be added to the principal of the loan and shall not be discounted or deducted therefrom nor paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day shall be considered one-thirtieth of a month.

(b) to (f). \* \* \* [Same as parent volume.]

**History:** En. Sec. 10, Ch. 283, L. 1959; amd. Sec. 1, Ch. 15, L. 1965.

#### Amendment

The 1965 amendment substituted "principal amount" for "amount" near the beginning of subsection (a); inserted "of the principal amount" before "of the loan" in three places in the first sentence of subsection (a); deleted from the end of the first sentence of subsection (a) the words "when the loan is made for a period of

one year, and proportionately at these rates for a greater or lesser amount within said limits or for a greater or lesser period of time"; inserted the second sentence in subsection (a); and made minor changes in phraseology in subsection (a).

#### Cross-References

Applicability of finance charge limitation imposed by retail installment sales act, secs. 74-602, 74-608.

**47-211. Installment payment—contract period.** No licensee shall enter into any contract of loan of three hundred dollars (\$300) or less, exclusive of charges, under this act which the borrower agrees to make any scheduled repayment of principal more than twenty-one (21) calendar months from the date of making such contract, nor any contract of loan for more than three hundred dollars (\$300) to and including one thousand dollars (\$1,000) exclusive of charges, under which the borrower

agrees to make any scheduled repayment of principal more than twenty-five (25) calendar months from the date of making, nor any contract of loan for more than one thousand dollars (\$1,000) to and including two thousand dollars (\$2,000) exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than thirty-seven (37) calendar months from the date of making, nor any contract of loan for more than two thousand dollars (\$2,000) to and including two thousand five hundred dollars (\$2,500) exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than thirty-seven (37) calendar months from the date of making. Every loan contract shall require payment of principal and charges in installments which shall be payable at approximately equal periodic intervals except that payment dates may be omitted to accommodate borrowers with seasonal incomes. No installment contracted for shall be substantially larger than any preceding installment. When a loan contract provides for monthly installments, the first installment may be payable at any time within forty-five (45) days of the date of the loan and the charges for the number of days in excess of thirty (30) from the date of making may be added to the scheduled amount of said installments.

History: En. Sec. 11, Ch. 283, L. 1959;  
amd. Sec. 4, Ch. 233, L. 1971.

#### Amendments

The 1971 amendment inserted "to and

including one thousand dollars (\$1,000)" in the first sentence, and added to the first sentence the provisions relating to loans of more than \$1,000.

**47-214. Insurance written with loans—types and limitation thereon—delivery of insurance policy.** (a) No insurance of any kind shall be written by a licensee, or employee, affiliate or associate of the licensee in connection with any loan except as hereinafter provided.

(b) Insurance permitted under the provisions of this section shall be obtained through an insurance company authorized to conduct such business in Montana by a duly licensed agent or agency of this state. Premiums shall not exceed those fixed by law or current applicable manual rates. Insurance written, as authorized by this section, may contain a mortgagee clause or other appropriate provisions to protect the insurable interest of the licensee.

(c) Property insurance. When the principal amount of the loan exceeds three hundred dollars (\$300) exclusive of the portion thereof attributable to insurance premiums and charges, the licensee may require a borrower to insure property offered as security against any substantial risk of loss, damage or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan, whichever is smaller, and for the customary term approximating the term of the loan contract. It shall be optional with the borrower to obtain such insurance in an amount greater than the amount of the loan or for a longer term.

(d) Credit life insurance and credit disability insurance. Subject to the laws of this state, credit life insurance and credit disability insurance may be provided at the expense of the borrower and may be pro-

vided by a licensee upon the request of the borrower when the principal amount of the loan exceeds three hundred dollars (\$300) exclusive of the portion thereof attributable to insurance premiums and charges. If any loan shall include amounts advanced for insurance premiums and charges such loan shall not in any event exceed two thousand five hundred dollars (\$2,500).

(e) The insurance authorized by this section may be sold, obtained or provided by or through a licensee and the premium or identifiable charge for the insurance may be included in the principal amount of the loan; provided, however, that no licensee shall require a borrower to purchase such insurance from such licensee or from any particular agent, broker or insurance company as a condition precedent for the obtaining of a loan. Any gain or advantage to the licensee or any employee, affiliate or associate of the licensee from the sale, provision or obtaining of insurance as authorized by this section shall not be deemed to be additional charges or a violation of this act.

A licensee shall not require insurance under this section until any existing insurance of the same type has expired or has been canceled and the unearned portion of the premium for the canceled insurance has been rebated to the borrower.

**History:** En. Sec. 14, Ch. 283, L. 1959; amd. Sec. 2, Ch. 15, L. 1965; amd. Sec. 5, Ch. 233, L. 1971.

#### Amendments

The 1965 amendment substituted "except as hereinafter provided" at the end of subsection (a) for "where the principal amount thereof is three hundred dollars (\$300) or less, and such amount of three hundred dollars (\$300) shall not include any charge for interest, insurance or any other identifiable charge"; inserted subsection (d) and the first paragraph of subsection (e); and substituted "this section" for "this subsection" near the beginning of the second paragraph of subsection (e), formerly the second paragraph of subsection (c).

The 1971 amendment substituted "property" for "tangible personal property" after "may require a borrower to insure" in the first sentence of subsection (c); inserted "and credit disability insurance" in subsection (d); substituted "two thousand five hundred dollars (\$2,500)" for "one thousand dollars (\$1,000)" at the end of subsection (d); and made minor changes in phraseology.

#### Effective Date

Section 3 of Ch. 15, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 12, 1965.

**47-215. Investigations, when—who may be investigated.** The commissioner or his duly authorized representatives may at any time investigate any transaction with borrowers and may examine the books, accounts and records in this state to discover violations of this act by (1) any licensee (2) any person who advertises for, solicits or holds himself as willing to make loans in amounts of two thousand five hundred dollars (\$2,500) or less, or (3) any person whom the commissioner has reason to believe is violating or is about to violate the provisions of this act.

**History:** En. Sec. 15, Ch. 283, L. 1959; amd. Sec. 6, Ch. 233, L. 1971.

#### Amendments

The 1971 amendment increased the limit specified in clause (2) from \$1,000 to \$2,500, and made a minor change in punctuation.



**47-216. Annual examinations—cost of examinations—limitations.** The commissioner shall make an annual examination of the books, accounts and records of every licensee in so far as they relate to transactions with borrowers under this act and may make such additional examinations as the commissioner deems necessary. The expenses of the commissioner incurred in the examination of the books and records of the licensees, shall be charged at the rate of one hundred dollars (\$100) per man per day required to conduct the examinations of the respective licensees. Each licensee shall be billed by the commissioner for the amount so charged to such licensee. If said charge is not paid within thirty (30) days after the mailing of such bill, the license of said licensee may be suspended or revoked.

**History:** En. Sec. 16, Ch. 283, L. 1959;  
amd. Sec. 7, Ch. 233, L. 1971.

**Amendments**

The 1971 amendment increased the charge specified in the second sentence from \$60 to \$100 per man per day, and made minor changes in phraseology.



## TITLE 48—MARRIAGE

- Chapter 1. Marriage defined—how and by whom contracted and authenticated, 48-118.1, 48-134, 48-136, 48-137, 48-142 to 48-150.  
2. Annulling marriage, 48-202, 48-203, 48-207.

### CHAPTER 1—MARRIAGE DEFINED—HOW AND BY WHOM CONTRACTED AND AUTHENTICATED

#### Section 48-118.1. Application for license.

- 48-134. Proof of age—premarital test certificate required of applicants for marriage license.  
48-136. Certificates from other state or for military personnel, when acceptable.  
48-137. Definition of test—rules and regulations.  
48-142. Legislative intent—public policy.  
48-143. Persons capable of marriage—when consent of parent or guardian required—special authority for underage marriages.  
48-144. Application for marriage license—form.  
48-145. Advice to license applicants of legislative intent.  
48-146. License required for marriage—place of ceremony—county where license issued.  
48-147. Applicants under influence of liquor or drug.  
48-148. Applicants delinquent in support obligations.  
48-149. Posting of notice of application—objections to marriage—hearing on objections—order refusing license—amendment of application—issuance without objection—waiting period.  
48-150. Validity of foreign marriages.

#### 48-101. (5695) What constitutes marriage.

##### Cross-Reference

Cause of action for breach of promise abolished, sec. 17-1202.

##### Common-law Marriage

Finding that claimant and deceased workman had been married at common law was not supported by evidence, instances of their cohabitation warranting conclusion of meretricious relations as easily as any other. *Miller v. Townsend Lumber Co.*, 152 M 210, 448 P 2d 148.

Man and woman who exchanged wedding rings, mutually declared their marriage, and thereafter openly lived together, were legally married even though wife continued to use her previous name for business purposes. *Estate of Swanson*, — M —, 502 P 2d 33.

Evidence of cohabitation alone was insufficient to justify finding of common-law marriage under this section. In re *Estate of Slavens*, — M —, 509 P 2d 293, 295.

In view of statute recognizing consensual or common-law marriage, presumption that man and woman depicting themselves as husband and wife have en-

tered into lawful contract of marriage is itself proof of marriage, and is overcome as matter of law only when in light of proved facts reasonable men could no longer find in accordance with the presumed fact; presumption was not overcome by the fact that mother claimed a ceremonial marriage and produced no evidence of mutual consent to common-law marriage. *Spradlin v. United States*, 262 F Supp 502.

##### Right of Consortium

The mutual rights which arise in the husband and wife upon marriage, termed contractual or legal rights, include rights which are embraced within the term consortium. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 73; *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300.

Under this section and section 36-101 a woman by her marriage obtains a contractual right to consortium. *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300, distinguished in *Hall v. United States*, 266 F Supp 671.



**48-102. (5696) Repealed.****Repeal**

This section (Sec. 51, Civ. C. 1895), relating to the age of consent for marriage,

was repealed by Sec. 12, Ch. 232, Laws 1963.

**48-111. (5705) Subsequent marriage—when illegal and void.****Prosecution for Bigamy**

Although bigamous marriage may have been void from beginning under this section for civil purposes, it nevertheless rendered subsequent marriage bigamous under former section 94-701 for criminal purposes, unless defendant could show that previous bigamous marriage was pronounced void, annulled or dissolved by competent court as provided under former section 94-702. *Crosby v. Ellsworth*, 431 F 2d 35.

**Voidness of Former Marriage**

Under former section 94-702 voidness of former marriage must have been declared by a court of competent jurisdiction; such a determination of voidness could not be made under this section by the person involved to avoid being charged with the crime of bigamy under former sections 94-701 and 94-702. *State v. Crosby*, 148 M 307, 420 P 2d 431, 433.

**48-113. (5707) Repealed.****Repeal**

This section (Sec. 57, Civ. C. 1895), relating to marriages contracted outside

the state, was repealed by Sec. 12, Ch. 232, Laws 1963.

**48-117, 48-118. (5711, 5712) Repealed.****Repeal**

These sections (Secs. 72, 73, Civ. C.

1895), relating to marriage licenses, were repealed by Sec. 12, Ch. 232, Laws 1963.

**48-118.1. Application for license.** An application for a marriage license shall be filed at least five (5) days before a license shall be issued; provided, that, upon application of either of the parties to a proposed marriage, any judge of a district court may, upon satisfactory evidence being presented to him that either of the parties to the proposed marriage is dangerously ill, such illness being likely to result in death, or upon the request of the parents or guardian, if any, or upon any other circumstance which, in the opinion of the judge of the district court, warrants special dispensation may by order authorize the license to be issued at any time before the expiration of the said five (5) days; provided, further that such judge shall, before issuing such order, require that the parties making application for such marriage license shall be examined under oath, and shall give the reasons why such license should not be withheld by the clerk of the district court for the statutory period. Such order shall be delivered to the clerk of the district court issuing the license and by him retained as prima facie evidence of his authority to issue the said marriage license within the five (5) day period. The judge or judges of any judicial district may delegate authority to the clerk or clerks of the district court within said district for the purpose of making the determination and entering the order that the five (5) day period may be waived.

**History:** En. Sec. 1, Ch. 71, L. 1961; amd. Sec. 10, Ch. 232, L. 1963; amd. Sec. 1, Ch. 50, L. 1971.

**Amendments**

The 1963 amendment added the second proviso to the first sentence.

The 1971 amendment added the last sentence, providing for delegation of authority to clerks of court.

**48-118.2. Repealed.****Repeal**

This section (Sec. 2, Ch. 71, L. 1961), relating to applications for marriage

licenses, was repealed by Sec. 12, Ch. 232, Laws 1963.

**48-120. (5714) License—when refused.****Compiler's Notes**

Section 48-118 referred to in this section, was repealed by Sec. 12, Ch. 232,

Laws of 1963. For present law, see sec. 48-143.

**48-121. (5715) Repealed.****Repeal**

This section (Sec. 76, Civ. C. 1895), relating to evidence required for marriage

licenses, was repealed by Sec. 12, Ch. 232, Laws 1963.

**48-134. Proof of age—premarital test certificate required of applicants for marriage license.** (1) Before a person, who is authorized by law to issue marriage licenses, shall issue a marriage license, each applicant therefor shall exhibit to him a birth certificate or other satisfactory evidence of age, and, if such applicant is a minor, the consent required by section 48-118, and shall also file with him a certificate from a duly qualified physician, licensed to practice medicine and surgery in any state or United States territory, or any other person authorized by laws of Montana to make such a certificate, which certificate shall state that the applicant has been given such an examination, including a standard serological test, made not more than twenty (20) days before the date of issuance of the license, and that the report of the results of the serological test has been exhibited to the applicant and that each party to the proposed marriage contract has examined the report of the serological test of the other party to the proposed contract.

(2) A person who by law is validly able to obtain a marriage license in this state is also validly able to give his or her consent to any examinations and tests required by this act. In submitting the blood specimen to the laboratory, the physician, or any other person authorized by the laws of Montana to make such a certificate, shall designate that it is a premarital test.

**History:** En. Sec. 1, Ch. 208, L. 1947; amd. Sec. 1, Ch. 21, L. 1959; amd. Sec. 1, Ch. 248, L. 1973.

**Amendments**

The 1973 amendment divided the former section into subsections (1) and (2); deleted "as may be necessary for the discovery of syphilis" following "serological test" in subsection (1); and made minor changes in style and phraseology.

**Compiler's Notes**

Section 48-118, referred to in subsection (1), was repealed by Sec. 12, Ch. 232, Laws 1963. For present law, see sec. 48-143.

**48-135. Contents and form of certificate.****Compiler's Notes**

Section 104, Ch. 349, Laws 1974, substituted "department of health and en-

vironmental sciences" throughout this section for "Montana state board of health."

**48-136. Certificates from other state or for military personnel, when acceptable.** Certificate forms provided by other states having comparable laws will be accepted for persons who have been examined and

who have received a standard serological test outside of Montana, if such examinations and tests are performed not more than twenty (20) days before the issuance of a marriage license. Certificates provided by the United States armed forces will be accepted for military personnel, if such certificates are signed by a medical officer commissioned in the United States armed forces or United States public health service; and the certificates state the examinations are standard serological tests and were performed not more than twenty (20) days before the issuance of the marriage license.

**History:** En. Sec. 3, Ch. 208, L. 1947; amd. Sec. 2, Ch. 248, L. 1973.

**Amendments**

The 1973 amendment inserted "stand-

ard" before "serological" in the first and second sentences; substituted "armed forces" for "army or navy" in the second sentence; and made minor changes in style and phraseology.

**48-137. Definition of test—rules and regulations.** For the purpose of this act, a standard serological test shall be a test for syphilis, rubella immunity, approved by the department of health and environmental sciences. An approved laboratory shall be the laboratory of the department of health and environmental sciences or a laboratory approved by that department. Any other state, United States public health service or United States armed forces laboratory shall be considered approved for the purposes of this act. Such laboratory test may be made on request at the laboratory of the department of health and environmental sciences. Reasonable rules for reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the certifying physician and the state shall be adopted by the department of health and environmental sciences.

**History:** En. Sec. 4, Ch. 208, L. 1947; amd. Sec. 3, Ch. 248, L. 1973.

**Amendments**

The 1973 amendment inserted "rubella immunity," in the first sentence; substituted "department of health and en-

vironmental sciences" for "Montana state board of health" throughout the section; substituted "armed forces" for "army or navy" in the third sentence; and made minor changes in style, phraseology and punctuation.

**48-140. Expense of administering act.**

**Compiler's Notes**

Section 104, Ch. 349, Laws 1974, substituted "department of health and en-

vironmental sciences" throughout this section for "state board of health."

**48-142. Legislative intent—public policy.** It is the intent of this act to promote the stability and best interest of marriage and the family. Marriage is the institution that is the foundation of the family and of society. Its stability is basic to morality and civilization, and of vital interest to society and the state. The consequences of the marriage contract are more significant to society than those of other contracts, and the public interest must be taken into account always. The seriousness of marriage makes adequate premarital counseling and education for family living highly desirable, and courses thereon are urged upon all persons contemplating marriage. The impairment or dissolution of the marriage relation generally results in injury to the public wholly apart from the effect upon the parties immediately concerned.



**History:** En. Sec. 1, Ch. 232, L. 1963.

**Title of Act**

An act relating to marriage; defining legislative intent; defining marriageable age; requiring the delivery of premarital information to applicants; providing for a uniform marriage application form; providing for the issuance of marriage licenses; limiting the issuance of licenses where applicants are under the influence of narcotic drug or alcohol or are failing to support lawful dependents; providing a

procedure for objection to the issuance of marriage licenses; defining the validity and invalidity of marriages performed in other states; amending section 48-118.1, R.C.M., 1947, to provide for testimony under the oath of applicants seeking a waiver of the waiting period between application for and issuance of a marriage license; prohibiting remarriage within six months after divorce; and repealing sections 48-102, 48-113, 48-117, 48-118, 48-118.2 and 48-121, R.C.M., 1947.

**48-143. Persons capable of marriage—when consent of parent or guardian required—special authority for underage marriages.** (1) Every male person who has attained the full age of eighteen (18) years or who has obtained the permission of the district judge as provided in subparagraph (3) and every female person who has attained the full age of eighteen (18) years or who has obtained the permission of the district judge as provided in subparagraph (3) shall be capable in law of contracting marriage if otherwise competent.

(2) If either of the contracting parties is under the age of eighteen (18), no license shall be issued without the consent of his or her parents or guardian, or of the parent having the actual care, custody and control of said party, given before the clerk of the court under oath, or certified under the hands of such parents or guardian as aforesaid attested by two adult witnesses, and properly verified by affidavit (or affirmation) before a notary public or other official authorized by law to take affidavits, which certificate shall be filed of record in the office of the said clerk of court at the time of application for said license. If there is no guardian or parent having the actual care, custody and control of said party, then the judge of the district court in the county where the application is pending may, after hearing upon proper cause shown, make an order allowing the marriage of said party.

(3) A male under the age of eighteen (18) or a female under the age of eighteen (18) may lawfully contract to marry and obtain a marriage license if there is first procured the consent of the parent or guardian as provided in subparagraph (2) and if the district judge of the county wherein the application is made, after examining the parties under oath, shall decide that it is to the best interest of such applicant and of the established public policy of the state of Montana, and shall authorize the clerk of the court to issue the license in conformance with the other provisions of this act.

**History:** En. Sec. 2, Ch. 232, L. 1963; amd. Sec. 13, Ch. 240, L. 1971; amd. Sec. 20, Ch. 94, L. 1973.

**Amendments**

The 1971 amendment made changes throughout the section to increase the age

of consent from eighteen for males and sixteen for females to nineteen for both parties.

The 1973 amendment made changes throughout the section to reduce the age of consent from nineteen to eighteen for both males and females.

**48-144. Application for marriage license—form.** The application for a marriage license shall be in form substantially as follows:

THIS IS A SWORN STATEMENT. IF YOU MAKE FALSE STATEMENTS, YOU MAY BE PROSECUTED FOR PERJURY OR FOR FALSE SWEARING.

State of Montana

County of \_\_\_\_\_

We, the undersigned, in accordance with statements hereinafter contained and the facts set forth herein, which we and each of us do solemnly swear are true and correct to the best of our knowledge and belief, do hereby make application to the \_\_\_\_\_ of \_\_\_\_\_ County, Montana, for a license to marry. We further swear that we may lawfully marry and that our application for a marriage license has not been rejected in any county in Montana (except under the circumstances stated below).

Signature of Male applicant \_\_\_\_\_

Signature of Female applicant \_\_\_\_\_

A certified copy of a birth certificate or other uncontrovertible evidence of age must be submitted for the examination of each applicant and of the clerk. A certified copy of each divorce decree, decree of annulment, and other decrees or orders relating to the custody, care or support of dependent children must also be furnished for examination.

#### From the Male Applicant

Full name \_\_\_\_\_  
 Race or Color \_\_\_\_\_  
 Usual Residence \_\_\_\_\_  
 Street address or R. F. D. No. \_\_\_\_\_

City or town, county, state, country \_\_\_\_\_

When did your residence in this county begin? \_\_\_\_\_

Have there been any interruptions in your residence in this county since that date? \_\_\_\_\_

Date of birth \_\_\_\_\_ Age \_\_\_\_\_  
 month day year last birthday

Usual occupation \_\_\_\_\_

Industry or business \_\_\_\_\_

Place of birth \_\_\_\_\_

Religious denomination \_\_\_\_\_  
 (not compulsory)

Full name of FATHER \_\_\_\_\_

Race or color \_\_\_\_\_

Residence \_\_\_\_\_

Occupation \_\_\_\_\_

Birthplace \_\_\_\_\_

Full name of MOTHER \_\_\_\_\_

Race or color \_\_\_\_\_

#### From the Female Applicant

Full name \_\_\_\_\_  
 Race or Color \_\_\_\_\_  
 Usual Residence \_\_\_\_\_  
 Street address or R. F. D. No. \_\_\_\_\_

City or town, county, state, country \_\_\_\_\_

When did your residence in this county begin? \_\_\_\_\_

Have there been any interruptions in your residence in this county since that date? \_\_\_\_\_

Date of birth \_\_\_\_\_ Age \_\_\_\_\_  
 month day year last birthday

Usual occupation \_\_\_\_\_

Industry or business \_\_\_\_\_

Place of birth \_\_\_\_\_

Religious denomination \_\_\_\_\_  
 (not compulsory)

Full name of FATHER \_\_\_\_\_

Race or color \_\_\_\_\_

Residence \_\_\_\_\_

Occupation \_\_\_\_\_

Birthplace \_\_\_\_\_

Full name of MOTHER \_\_\_\_\_

Race or color \_\_\_\_\_

Residence -----  
 Occupation -----  
 Birthplace -----  
 Maiden name of MOTHER -----  
 Male applicant affirms this  
 is his ----- marriage.

number

Previous marriages were ended  
 by: -----

manner date place

Children by prior marriages -----

Are you presently in default  
 of a legal obligation to sup-  
 port lawful dependent(s)? -----

Are you under the influence  
 of intoxicating liquor or  
 narcotic drug? -----

Your blood relationship to  
 other applicant, if any? -----

If prior application rejected  
 in another county, state  
 place, reasons and date: -----

Sworn and subscribed to before  
 me this ----- day of -----  
 ----- A.D., 19-----

Signature

Title

Marriage to take place -----  
 ----- date -----

place (city and county)

Application filed -----  
 ----- date -----

License issued -----  
 ----- date -----

Residence -----  
 Occupation -----  
 Birthplace -----  
 Maiden name of MOTHER -----  
 Female applicant affirms this  
 is her ----- marriage.

number

Previous marriages were ended  
 by: -----

manner date place

Children by prior marriages -----

Are you presently in default  
 of a legal obligation to sup-  
 port lawful dependent(s)? -----

Are you under the influence  
 of intoxicating liquor or  
 narcotic drug? -----

Your blood relationship to  
 other applicant, if any? -----

If prior application rejected  
 in another county, state  
 place, reasons and date: -----

Future Address

Enter here exact future address  
 after marriage, if known -----

street address

city or town

state

History: En. Sec. 3, Ch. 232, L. 1963.

48-145. Advice to license applicants of legislative intent. At the time of application for such license, the clerk of the district court shall give to each of the applicants (or mail to an applicant who completes his part



of the application outside of the state) a card with the statement of legislative intent printed thereon. Such cards shall be procured by the clerk of the district court at the expense of the county and shall be in form substantially as follows:

### MARITAL INFORMATION

Your marriage license will be issued to you under the provisions of Title 48 of the Montana statutes. For your information and advice, that title includes the following provision:

**INTENT.** It is the intent of this act to promote the stability and best interest of marriage and the family. Marriage is the institution that is the foundation of the family and of society. Its stability is basic to morality and civilization, and of vital interest to society and the state. The consequences of the marriage contract are more significant to society than those of other contracts, and the public interest must be taken into account always. The seriousness of marriage makes adequate premarital counseling and education for family living highly desirable, and courses thereon are urged upon all persons contemplating marriage. The impairment or dissolution of the marriage relation generally results in injury to the public wholly apart from the effect upon the parties immediately concerned.

**History:** En. Sec. 4, Ch. 232, L. 1963.

**48-146. License required for marriage—place of ceremony—county where license issued.** No Montana resident shall be joined in marriage within this state until a license has been obtained for that purpose from the clerk of the district court of the county in which one of the parties has resided for at least five (5) days immediately prior to making application therefor.

A license so issued shall authorize a marriage ceremony to be performed in the county where the license is issued or in any other county of this state.

If both parties be nonresidents of the state, such license may be obtained from the clerk of the district court of the county where the marriage ceremony is to be performed. If one of such persons is a nonresident of the county where such license is to issue, his part of the application may be completed sworn to (or affirmed) before the person authorized to accept such applications in the county and state in which he resides.

**History:** En. Sec. 5, Ch. 232, L. 1963.

**48-147. Applicants under influence of liquor or drug.** No license to marry shall be issued if, at the time of making application, either of the applicants is under the influence of intoxicating liquor or narcotic drug.

**History:** En. Sec. 6, Ch. 232, L. 1963.

**48-148. Applicants delinquent in support obligations.** No license to marry shall be issued by any clerk of the district court if either of the

applicants for a license is or has been failing to support lawful dependents when ordered to do so by a court having jurisdiction, unless a judge of a court of record after hearing shall determine that despite such failure said applicant is financially able to discharge the duty to support existing dependents and those resulting from the contemplated marriage and shall authorize the clerk to issue the license. The judge shall have authority to require that the applicant post sufficient security to insure the performance of the support obligation to existing dependents.

History: En. Sec. 7, Ch. 232, L. 1963.

**48-149. Posting of notice of application—objections to marriage—hearing on objections—order refusing license—amendment of application—issuance without objection—waiting period.** (1) Immediately upon entering an application for a license, the clerk of the district court shall post in his office a notice giving the names and residences of the parties applying therefor, and the date of the application. Any parent, grandparent, child, or natural guardian thereof if a minor, brother, sister or guardian of either of the applicants for a license, or either of the applicants, or the county attorney, believing that the statements of the application are false or insufficient, or that the applicants or either of them are incompetent to marry, may file with the district court in the county in which the license is applied for, a petition under oath, setting forth the grounds of objection to the marriage and asking for an order requiring the parties making such application to show cause why the license should not be refused. Whereupon, said court, if satisfied that the grounds of objection are *prima facie* valid, shall issue an order to show cause as aforesaid, returnable as the court may direct, but not more than fourteen (14) days after the date of said order, which shall be served forthwith upon the applicants for such license residing in the state, and upon the clerk before whom such application has been made, and shall operate as a stay upon the issuance of the license until further ordered; if either or both of said applicants are nonresidents of the state said order shall be served forthwith upon said nonresident by publication one time in a newspaper published in the county wherein said application is pending, and by mailing a copy thereof to said nonresident at the address contained in the application.

(2) If, upon hearing, the court finds that the statements in the application are willfully false or insufficient, or that either or both of said parties are not competent in law to marry, the court shall make an order refusing the license, and shall immediately report such matter to the county attorney. If said falseness or insufficiency is due merely to inadvertence, then the court shall permit the parties to amend the application so as to make the statements therein true and sufficient, and upon application being so amended, the license shall be issued. If any party is unable to supply any of the information required in the application, the court may, if satisfied that such inability is not due to willfulness or negligence, order the license to be issued notwithstanding such insufficiency. The costs and disbursements of the proceedings under this section shall

rest in the discretion of the court, but none shall be taxed against any county attorney acting in good faith.

(3) If there be no legal objection to said application for license within five (5) days of the application, the clerk of the district court shall issue a marriage license.

History: En. Sec. 8, Ch. 232, L. 1963.

**48-150. Validity of foreign marriages.** (1) All marriages which are valid by the law of the state or nation where at least one (1) of the parties was domiciled at the time of the marriage and where both intended to make their home thereafter are valid in this state.

(2) All marriages which are valid by the law of the state or nation where the marriage took place are valid in this state unless invalid under the laws of the state or nation where at least one (1) of the parties was domiciled at the time of marriage and where both intended to make their home thereafter.

(3) The courts of this state may refuse to give a particular effect to a marriage contracted in another state or nation if to do so would be contrary to a strong public policy of this state.

History: En. Sec. 9, Ch. 232, L. 1963.

#### Repealing Clause

Section 12 of Ch. 232, Laws 1963 read "Sections 48-102, 48-113, 48-117, 48-118, 48-118.2, and 48-121, R. C. M., 1947, are repealed."

#### 48-151. Repealed.

##### Repeal

This section (Sec. 11, Ch. 232, L. 1963), relating to the waiting period after di-

vorce, was repealed by Sec. 1, Ch. 63, Laws 1967.

## CHAPTER 2—ANNULLING MARRIAGE

Section 48-202. Causes for annulling marriages.

48-203. Actions therefor—when and by whom commenced.

48-207. Legitimacy of children unaffected by annulment—custody and support orders.

#### 48-201. (5728) Void marriages.

##### Necessity for Judicial Declaration

In view of statute providing that either party to void marriage may have it declared so judicially, former statute making it unlawful to marry again until six months after a judgment of divorce meant

that marriage in violation thereof should be void only from time its nullity shall be declared so judicially. State ex rel. Angvall v. District Court, Thirteenth Judicial District, 151 M 483, 444 P 2d 370.

**48-202. (5729) Causes for annulling marriages.** A marriage may be annulled for any of the following causes, existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of majority, and such marriage was contracted without the consent of his or her parents or guardian, or person



having charge of him or her; unless, after attaining the age of majority, such party for any time freely cohabited with the other as husband or wife.

2 to 6. \* \* \* [Same as parent volume.]

**History:** En. Sec. 110, Civ. C. 1895; re-en. Sec. 3636, Rev. C. 1907; re-en. Sec. 5729, R. C. M. 1921; amd. Sec. 2, Ch. 169, L. 1963. Cal. Civ. C. Sec. 82. Based on Field Civ. C. Sec. 54.

**Amendment**

The 1963 amendment substituted "age of majority" for "age of legal consent" or "age of consent" in two places in subd. 1.

**48-203. (5730) Actions therefor—when and by whom commenced.** An action to obtain a decree of nullity of marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties, as follows:

1. For causes mentioned in subdivision 1: By the party to the marriage who was married under the age of majority within two years after arriving at the age of majority; or by a parent, guardian, or other person having charge of such nonaged male or female, at any time before such married minor has arrived at the age of majority.

2 to 6. \* \* \* [Same as parent volume.]

**History:** En. Sec. 111, Civ. C. 1895; re-en. Sec. 3637, Rev. C. 1907; re-en. Sec. 5730, R. C. M. 1921; amd. Sec. 1, Ch. 169, L. 1963. Cal. Civ. C. Sec. 83.

**Amendment**

The 1963 amendment substituted "age of majority" for "age of legal consent" or "age of consent" in three places in subd. 1.

**48-204, 48-205. (5731, 5732) Repealed.**

**Repeal**

These sections (Secs. 112, 113, Civ. C. 1895), relating to children of annulled

marriages, were repealed by Sec. 4, Ch. 169, L. 1963.

**48-207. Legitimacy of children unaffected by annulment—custody and support orders.** A judgment of nullity of marriage does not affect the legitimacy of children conceived or born before the judgment, and the judgment must so specify, and the court may during the pendency of the action, or at the time judgment is rendered or at any time thereafter make such order for the custody, care, education, maintenance and support of such children during their minority as may seem necessary or proper.

**History:** En. Sec. 3, Ch. 169, L. 1963.

"Sections 48-204 and 48-205, R.C.M., 1947, are repealed."

**Repealing Clause**

Section 4 of Ch. 169, Laws 1963 read



## TITLE 49—MAXIMS OF JURISPRUDENCE

### CHAPTER 1—MAXIMS OF JURISPRUDENCE

49-102. (8739) When the reason of a rule ceases, so should the rule itself.

#### Change in Trial Judges

Rule that appellate court will not ordinarily disturb findings of fact of trial court where there is conflict in evidence is not

applicable where deciding judge was not judge who heard testimony. *Kostbade v. Metier*, 150 M 139, 432 P 2d 382.

49-103. (8740) Where the reason is the same, the rule should be the same.

#### References

*Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 74.

49-104. (8741) One must not change his purpose to the injury of another.

#### References

*Thisted v. Tower Management Corp.*, 147 M 1, 409 P 2d 813.

49-105. (8742) Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.

#### Release Void as Contrary to Public Policy.

This section together with sections 58-607 and 13-801 (2) were broad enough to render illegal any exculpatory clause or release relieving a potential tortfeasor from all liability for future negligent conduct where such clause or release was contrary to public policy or against the public interest; release relieving county fair board from any liability to livestock

while on fairgrounds was illegal and unenforceable as contrary to public policy and against public interest and precluded county from disclaiming liability in negligence action for exhibitor's horses killed in barn fire on county fairgrounds; suppression of release in exhibitor's negligence action was not error or ground for new trial. *Haynes v. County of Missoula*, — M —, 517 P 2d 370.

49-106. (8743) One must so use his own rights as not to infringe upon the rights of another.

#### References

*State Highway Commission v. Biastoch Meats, Inc.*, 145 M 261, 400 P 2d 274;

*Thisted v. Tower Management Corp.*, 147 M 1, 409 P 2d 813.

49-108. (8745) Acquiescence in error takes away the right of objecting to it.

#### References

*Brannon v. Lewis and Clark County*, 143 M 200, 387 P 2d 706.

49-109. (8746) No one can take advantage of his own wrong.

#### Loss of Right of Survivorship

Where husband feloniously killed his wife, he did not acquire by right of sur-

ivorship her share of property held jointly with him, but took the property under a constructive trust, and when he



thereafter committed suicide his heirs had no right to wife's share. *In re Cox' Estate*, 141 M 583, 380 P 2d 584.

Wife who feloniously killed her husband did not acquire by right of survivorship his share of property held jointly with her, but took the property under a constructive trust. *Sikora v. Sikora*, — M —, 499 P 2d 808.

#### **Surety's Liability**

This statute was one ground for holding surety liable on bond, even though bond

was not in effect at time act occurred giving rise to liability, since surety company had been tardy in processing papers of party to be bonded and had accepted premium on bond. *Lapke v. Hunt*, 151 M 450, 443 P 2d 493.

#### **References**

Cited in *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758, 765; *Brannon v. Lewis and Clark County*, 143 M 200, 387 P 2d 706; *Thisted v. Tower Management Corp.*, 147 M 1, 409 P 2d 813.

49-113. (8750) He who takes the benefit must bear the burden.

#### **Competency of Executioner**

One who received benefit from trustee's termination of trust could not, at a later proceeding, deny trustees competence to execute termination of trust in order to prove incompetency of the same person to execute a will, which will the beneficiary was attempting to avoid. *In re Estate of Powers*, — M —, 515 P 2d 368.

#### **Surety's Liability**

This statute was one ground for holding surety liable on bond, even though bond was not in effect at time act occurred giving rise to liability, since surety company had been tardy in processing papers of party to be bonded and had accepted premium on bond. *Lapke v. Hunt*, 151 M 450, 443 P 2d 493.

49-114. (8751) One who grants a thing is presumed to grant also whatever is essential to its use.

#### **References**

*Thisted v. Country Club Tower Corp.*, 145 M 87, 405 P 2d 432.

49-115. (8752) For every wrong there is a remedy.

#### **References**

*Thisted v. Tower Management Corp.*, 147 M 1, 409 P 2d 813.

49-119. (8756) The law helps the vigilant, before those who sleep on their rights.

#### **References**

*Brannon v. Lewis and Clark County*, 143 M 200, 387 P 2d 706.

49-121. (8758) That which ought to have been done is to be regarded as done, in favor of him to whom, and against him from whom, performance is due.

#### **References**

*Thisted v. Country Club Tower Corp.*, 146 M 87, 405 P 2d 432; *Thisted v.*

*Tower Management Corp.*, 147 M 1, 409 P 2d 813.

49-124. (8761) The law neither does nor requires idle acts.

#### **Contract of Purchase**

Where purchaser conditioned annual payment on performance of certain acts by vendor contained in contract, and subsequently brought suit for breach of contract when vendor did not perform such

acts, trial court properly entered judgment for vendor on evidence that purchaser, prior to payment, was going to insist on performance by vendor of other acts not contained in contract, since performance of acts specified in contract

would have been idle and under this section law does not require performance of idle acts. *Quayle v. Counts*, 155 M 57, 466 P 2d 911.

49-135. (8772) Where one of two innocent persons must suffer by the act of a third, he, by whose negligence it happened, must be the sufferer.

#### Contract of Sale

In vendor's action against subsequent bona fide purchaser to determine ownership and right to possession of an airplane, vendor was estopped to challenge sale by vendee by failing to record title document to avoid transfer tax, making no inquiry for a number of months about the plane, which he allowed vendee to have, even though the payments were due under the contract, and failing to make a diligent effort to recover the plane after

the payments became due. *Lakes v. Orley*, 148 M 325, 420 P 2d 151, 153.

#### Surety's Liability

This statute was one ground for holding surety liable on bond, even though bond was not in effect at time act occurred giving rise to liability, since surety company had been tardy in processing papers of party to be bonded and had accepted the premium on bond. *Lapke v. Hunt*, 151 M 450, 443 P 2d 493.





## TITLE 50—MINES AND MINING

- Chapter 1. Safety in mines other than coal mines, 50-101, 50-102, 50-108, 50-118, 50-119.
4. Regulation of coal mining industry—coal mining code, 50-401 to 50-405, 50-407, 50-412.1, 50-428 to 50-434.1, 50-467.1, 50-468, 50-476 to 50-482.
  7. Location and record of mining and millsite claims, 50-701 to 50-702.1, 50-704.
  8. Mining—rights of way, 50-813, 50-815, 50-816.
  10. Strip mining and reclamation, 50-1034 to 50-1057.
  11. Dredge mining—preservation of lands, Repealed—Section 116, Chapter 428, Laws of 1973.
  12. Reclamation of mining lands, 50-1201 to 50-1216, 50-1219 to 50-1226.
  13. Notice to landowner of surface operations, 50-1301 to 50-1306.
  14. Strip mined coal conservation, 50-1401 to 50-1409.
  15. Open cut mining, 50-1501 to 50-1516.
  16. Strip Mine Siting Act, 50-1601 to 50-1617.

### CHAPTER 1—SAFETY IN MINES OTHER THAN COAL MINES

- Section 50-101. Inspectors of metal and nonmetallic mines—employment.
- 50-102. Inspections and investigations—access to mine—order to close mine or abate violation—notice—hearing and review.
- 50-108. To what mines act is applicable.
- 50-118. Violation of the act—penalties.
- 50-119. Definitions.

**50-101. (3418) Inspectors of metal and nonmetallic mines—employment.** The industrial accident board shall employ an adequate number of qualified metal and nonmetallic mine inspectors necessary for the enforcement of this act and shall prescribe their powers, duties and responsibilities.

**History:** En. Sec. 1, p. 109, L. 1897; re-en. Sec. 1711, Rev. C. 1907; amd. Sec. 1, Ch. 71, L. 1909; amd. Sec. 1, Ch. 22, L. 1921; re-en. Sec. 3418, R. C. M. 1921; amd. Sec. 1, Ch. 310, L. 1971.

#### Amendments

The 1971 amendment rewrote this section. For previous text, see parent volume.

#### Cross-References

Industrial accident board abolished and functions transferred, sec. 82A-1005 (1).

**50-102. (3419) Inspections and investigations—access to mine—order to close mine or abate violation—notice—hearing and review.** (a) The board is authorized at any time to cause to be made such inspections and investigations as it shall deem necessary in surface and underground mines which are subject to this act (1) for the purpose of obtaining, utilizing, and disseminating information relating to health and safety conditions in such mines, the causes of accidents involving bodily injury or loss of life, or the causes of occupational diseases originating therein, and (2) for the purpose of determining whether or not there is compliance with a health and safety standard or order issued under this act.

(b) For the purpose of making any inspection or investigation authorized by this act, authorized representatives of the board shall have the right of entry to, upon, or through any mine which is subject to this act.

(c) If, upon any inspection of a mine which is subject to this act authorized representatives of the board find that the conditions or prac-

tices in the mine are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated, such representatives shall determine the extent of the area of such mine throughout which the danger exists, and thereupon issue an order requiring the operator of such mine to cause all persons, except the persons designated below, whose presence in such area is necessary to eliminate the danger described in such order, to be withdrawn from, and to be debarred from entering such area:

(1) Any person whose presence in such area is necessary in the judgment of the operator of the mine, to eliminate the danger described in the order.

(2) Any public official whose official duties require him to enter such area.

(3) Any legal or technical consultant, or any representative of the employees of the mine, who is a person qualified to make mine examinations, or is accompanied by such a person, and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

(d) If, upon any such inspection or investigation, an authorized representative finds that there has been a failure to comply with a mandatory standard which is applicable to such mine, but that such failure to comply has not created a danger that could reasonably be expected to cause death or serious physical harm in such mine immediately or before the imminence of such danger can be eliminated, he shall find what would be a reasonable period of time within which such violation should be totally abated and thereupon issue a notice fixing a reasonable time for the abatement of the violation. If, upon the expiration of such period of time as originally fixed or extended, the authorized representative finds that such violation has not been totally abated, and if he also finds that such period of time should not be further extended, he shall also find the extent of the area which is affected by such violation; thereupon, the board shall make an order requiring the operator of such mine to cause all persons in such area, excepting the following persons whose presence in such area is necessary to abate the violation described in the order, to be withdrawn from, and to be debarred from entering such area:

(1) Any person whose presence in such area is necessary, in the judgment of the operator of the mine, to abate the violation described in the order.

(2) Any public official whose official duties require him to enter such area.

(3) Any legal or technical consultant, or any representative of the employees of the mine who is a person qualified to make examinations, or is accompanied by such a person, and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

(e) Findings and orders issued pursuant to this section shall contain a detailed description of the conditions or practices which cause and constitute a situation of imminent danger or a violation of a mandatory standard, and a description of the area of the mine throughout which persons must be withdrawn and debarred.

(f) Each finding made and notice or order issued under this section shall be given promptly to the operator of the mine to which it pertains by the person making such finding or order, and all such findings, orders, and notices shall be in writing, and shall be signed by the person making them. A notice or order issued by an authorized representative pursuant to this section may be annulled, canceled, or revised by the authorized representative, and in case of a board order, the board may annul, cancel or revise the order.

(g) The order of the duly authorized representative of the board shall remain in effect, but shall immediately be subject to review as provided in this act.

(h) An operator notified of an order made pursuant to section 50-102 (c) may apply to the board for a hearing, revision, or annulment of such order. Whenever the board after such a hearing upon complaint, or upon its own motion, finds that danger throughout the area of such mine as set out in such order existed at the time of making the inspection, it shall make an order denying a revision or annulment; but, if it finds that such danger did not exist throughout the area of such mine, it shall make an order consistent with its findings, revising or annulling the order under review.

(i) An operator notified of an order made pursuant to section 50-102 (d) may apply to the board for a hearing or revision of such order. If the board finds that there was no violation, it shall make an order annulling the order under review. If the board finds that there was such a violation, but such violation has since been abated, it shall make an order annulling the order under review. If the board finds that such violation was not totally abated, it shall make an order consistent with its findings.

(j) In view of the urgent need for prompt decisions of matters submitted to the board under section 50-102, all actions which the board or its authorized representatives are required to take under this section shall be taken as rapidly as practical, consistent with adequate consideration of the issues involved.

**History:** En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R. C. M. 1921; amd. Sec. 2, Ch. 310, L. 1971.

#### **Amendments**

The 1971 amendment rewrote this section. For previous text, see parent volume.

#### **50-103 to 50-107. (3420 to 3424) Repealed.**

##### **Repeal**

Sections 50-103 to 50-107 (Sec. 588, Pol. C. 1895; Secs. 2 to 5, Ch. 98, L. 1903),

relating to inspections and investigation of mine safety, were repealed by Sec. 6, Ch. 310, Laws 1971.

**50-108. (3425) To what mines act is applicable.** This act shall apply to all mines (except coal and lignite) and individuals, owners, lessors,



lessees, agents, partnerships, corporations, managers, operators, or employers operating any surface or underground metal or nonmetallic mines in this state. These individuals, owners, lessors, lessees, agents, partnerships, corporations, managers, operators, or employers operating any surface or underground metal or nonmetallic mines (excluding coal and lignite) shall report the same to the board, state the name of the mine, the location of the same, the name of the company, person, or persons owning or operating the same, post-office address, and number of men employed.

**History:** En. Sec. 6, Ch. 98, L. 1903; re-en. Sec. 1720, Rev. C. 1907; re-en. Sec. 3425, R. C. M. 1921; amd. Sec. 3, Ch. 310, L. 1971.

#### Amendments

The 1971 amendment rewrote the first portion of the section. For previous version, see parent volume.

### 50-109 to 50-117. (3426 to 3434) Repealed.

#### Repeal

Sections 50-109 to 50-117 (Sec. 590, Pol. C. 1895; Secs. 3650 to 3654, Pol. C. 1895; Secs. 1 to 3, Ch. 72, L. 1911), relating to

safety and sanitary standards in mines and penalties for violations, were repealed by Sec. 6, Ch. 310, Laws 1971.

**50-118. (3435) Violation of the act—penalties.** (a) Whenever an operator (1) violates or fails or refuses to comply with any order, rule, or regulation issued under this act, or (2) interferes with, hinders, or delays the board or its authorized representatives in carrying out any duties under this act, or (3) refuses to admit an authorized representative of the board to any mine which is subject to this act, or (4) refuses to permit the inspection or investigation of any mine which is subject to this act, or an accident, injury, or occupational disease occurring in or connected with such a mine, or (5) refuses to furnish the board any information or report requested by the board and which may reasonably be necessary to carry out the provisions of this act, a civil action for preventive relief, including, but not limited to, an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the board in the district court for the county in which the mine in question is located or in which the mine operator has its principal office.

(b) Any person who knowingly (1) violates or fails or refuses to comply with any order, rule, or regulation issued under this act, or (2) interferes with, hinders, or delays the board or its authorized representatives in carrying out any duties under this act, or (3) refuses to admit an authorized representative of the board to any mine which is subject to this act, or (4) refuses to permit the inspection or investigation of any mine which is subject to this act, or of an accident, injury, or occupational disease occurring in or connected with such a mine, or (5) refuses to furnish the board any information or report requested by the board and which may reasonably be necessary to carry out the provisions of this act, shall be guilty of a misdemeanor, and shall upon conviction thereof be punished for each such offense by a fine of not less than one hundred dollars (\$100), or more than three thousand dollars (\$3,000), or by imprisonment in the county jail not exceeding six (6) months, or

both. In any instance in which such offense is committed by a corporation, any officer or authorized representative of such corporation who knowingly permits such offense to be committed shall, upon conviction, be subject to the same fine or imprisonment, or both.

**History:** En. Sec. 4, Ch. 72, L. 1911; re-en. Sec. 3435, R. C. M. 1921; amd. Sec. 4, Ch. 310, L. 1971.

#### Amendments

The 1971 amendment completely rewrote this section. For previous text, see parent volume.

**50-119. Definitions.** "Authorized representative" means mine inspector or any other person employed or authorized by the industrial accident board to perform any and all duties under this act. "Board" means the industrial accident board of the state of Montana. "Corporation" means a body formed and authorized by law to act as a single person although constituted by one or more persons and legally endowed with various rights and duties including the capacity of succession. "Employee" means every person in this state, including a contractor other than an "independent contractor," who is in the service of an employer as hereinafter defined in or about any mine, mill, smelter, excavation, or quarry under any appointment or contract of hire, express or implied, oral or written, whether lawfully or unlawfully employed and whether the employment is casual or otherwise. "Employer" means every person, firm, partnership, corporation, or association, including an independent contractor, who has any person in service in or about any mine, mill, smelter, excavation, or quarry under any appointment or contract of hire, express or implied, oral or written. "Inspector" means a person or persons employed by the industrial accident board to inspect metallic and nonmetallic mines, mills, smelters, or quarries as provided in this act. "Mine" means any mine (or excavation) when clay, metallic ore, mineral, gypsum, or rock is dug or mined whether on surface or underground, where metal-bearing ores or nonmetallic mineral commodities (exclusive of coal or lignite) are dug or mined whether at the surface or underground. "Notice" means a written notice, work order or correction notice issued by an authorized representative of the board, which notice specifies a violation(s) and directs or recommends corrective measures and may specify a definite date or time in which to abate said violation(s). "Occupational Health" means any of those health conditions that occur as a result of employment in a mine. "Order" means and includes any decision, rule, regulation, direction, requirement, or standard set, adopted, or issued by the board, or any other determination or decision made by the board.

**History:** En. 50-119 by Sec. 5, Ch. 310, L. 1971.

#### Title of Act

An act amending sections 50-101, 50-102, 50-108, and 50-118, R. C. M., 1947, adding section 50-119 and repealing sections 50-103, 50-104, 50-105, 50-106, 50-107, 50-109, 50-110, 50-111, 50-112, 50-113, 50-114, 50-115, 50-116, 50-117, R. C. M., 1947, to update the law so that it conforms and

is equal to the Federal Metal and Nonmetallic Safety Act in order that Montana may qualify as and have what is known as a "state approved plan."

#### Repealing Clause

Section 6 of Ch. 310, Laws 1971 read "Sections 50-103, 50-104, 50-105, 50-106, 50-107, 50-109, 50-110, 50-111, 50-112, 50-113, 50-114, 50-115, 50-116 and 50-117 are hereby repealed."

# CHAPTER 4—REGULATION OF COAL MINING INDUSTRY— COAL MINING CODE

- Section 50-401. Short title.  
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 50-480.6. Application for hearing.  
 50-480.7. Order—no violation—abatement.  
 50-480.8. Expeditious hearing by division.  
 50-481. Violation of the act—penalties.  
 50-482. Severability.

**50-401. (3447) Short title.** This chapter shall be known and may be cited as the "Montana Coal Mining Code."

History: En. Sec. 1, Ch. 120, L. 1911;  
 re-en. Sec. 3447, R. C. M. 1921; amd. Sec.  
 1, Ch. 267, L. 1974.

## Amendments

The 1974 amendment substituted the present wording for "This act shall be known as the Coal Mining Code of the state of Montana."

### 50-401.1. Definitions. As used in this chapter:

(1) "Division" means the division of workmen's compensation of the department of labor and industry provided for in 82A-1004, and the state coal mine inspectors employed by the division.

(2) "Mine" and "coal mine" means all parts of the property of a mining plant which contribute, directly or indirectly, under one management, to the mining or handling of coal.

(3) "Excavations" and "workings" means all parts of a mine excavated or being excavated, including shafts, slopes, tunnels, entries, rooms, and working places, whether abandoned or in use.

(4) "Shaft" means any vertical opening through the strata which is or may be used for the purpose of ventilation or escape, or for hoisting or lowering of men or material in connection with the mining of coal.



(5) "Slope" and "drift" means respectively an incline or horizontal way, opening, or tunnel to a seam of coal to be used for the same purpose as a shaft.

(6) "Following shot" means a shot which is dependent in its action on the result of another shot.

(7) "Operator" as applied to the party in control of a mine under this chapter, means the person, firm, or body corporate who is the immediate proprietor as owner or lessee of the plant, and, as such, is responsible for the condition and management thereof.

(8) "Mine foreman" means a person who is charged with the general direction of the underground work, or both the underground work and the outside work of a coal mine, and who is commonly known and designated as "mine boss."

(9) "Mine examiner" means a person charged with the examination of the condition of the mine before the miners are permitted to enter it, and who is commonly known as the "fire boss."

(10) "Gassy mine" means a mine is considered to be potentially gassy. The division may further define this term in its rules.

**History:** En. 50-401.1 by Sec. 2, Ch. 267, L. 1974.

#### **Title of Act**

An act revising and updating the "Coal Mining Code"; extending the regulation of coal mining to meet the requirements of the federal Coal Mine Health and Safety Act of 1969; amending sections

50-401 through 50-405, 50-407, 50-428 through 50-434 and 50-468, R. C. M. 1947; and repealing sections 50-406, 50-410 through 50-427, 50-435 through 50-465, 50-467, 50-469 through 50-475, 50-501 through 50-509, and 50-511 through 50-531, R. C. M. 1947; and providing an effective date.

**50-402. (3448) Coal mine inspectors—appointment.** The division shall appoint state coal mine inspectors for the enforcement of this chapter.

**History:** En. Sec. 2, Ch. 120, L. 1911; amd. Sec. 1, Ch. 20, L. 1921; re-en. Sec. 3448, R. C. M. 1921; amd. Sec. 3, Ch. 267, L. 1974.

#### **Amendments**

The 1974 amendment substituted the present wording for "The industrial accident board shall appoint a coal mine inspector and shall fix his compensation and term of office."

**50-403. (3449) Qualifications of inspector.** A person is not eligible to be a state coal mine inspector unless he is a citizen of the United States, a resident of this state, has been actually employed in coal mining five (5) years before his appointment, and holds a mine foreman's certificate and a mine inspector's certificate from this state.

**History:** En. Sec. 3, Ch. 120, L. 1911; re-en. Sec. 3449, R. C. M. 1921; amd. Sec. 1, Ch. 185, L. 1949; amd. Sec. 4, Ch. 267, L. 1974.

#### **Amendments**

The 1974 amendment rewrote this section. For prior version, see parent volume.

**50-404. (3450) Powers and duties of division.** (1) The division may enter, inspect, and examine any coal mine or any shaft, drift, or slope in the process of sinking for the purpose of mining coal in this state, and the workings and the machinery belonging thereto, at all reasonable times, either by day or night, but not so as to impede or obstruct the workings of the mine.

(2) The division shall immediately notify the owner, lessee, superintendent, or mining boss of the discovery of any violation of the mining laws of this state, and of the penalty thereby imposed for those violations; and if the notice is disregarded, the division may stop immediately the working and operation of any mine or any part thereof where any dangerous or unlawful conditions are found. However, where conditions justify the division in so doing, it may grant a reasonable length of time for making repairs or for putting the mine in proper condition, but the number of workers employed in the mine or in the section of the mine involved shall be limited to those necessary to correct the unsafe condition. Where any stops or cessation of work are enforced, the division may thereafter allow the mine or part of a mine to be reopened when the dangerous or unlawful conditions existing there are removed or remedied so that they no longer exist.

(3) The owner, lessee, operator, superintendent, or mining boss of the mine is required to furnish the means necessary for the entry, inspection, examination, inquiry, and exit. The division shall carefully examine all the coal mines in operation in this state at least every three (3) months, and more often if necessary, to see that every precaution is taken to ensure the safety of all workers that may be engaged in the coal mine. The division shall make a record of the visit, noting the time and the material circumstances of the inspection. If the division has in its possession any complaint to the effect that this chapter is being violated, it shall notify the employer and the employees that it is about to make an inspection. The employees' representative has the right to accompany the division in making an official mine inspection. The owner or operator has the right to personally accompany the division while inspecting his property, or to designate someone to accompany the division.

**History:** En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R. C. M. 1921; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974.

#### Amendments

The 1974 amendment substituted references to "division" throughout the section for references to the "state coal mine inspector and his deputies"; substituted "workers" for "men" and "workmen"; deleted a second sentence in subsection (1) relating to specific conditions into which

the inspector was to inquire; deleted a third subsection relating to penalties for obstructing or failing to co-operate with the inspector; substituted "this chapter" for "the mining code" in the fourth sentence of subsection (3); substituted the fifth sentence in subsection (3) for a sentence permitting the employees to appoint an employee to accompany the inspector; deleted a sentence permitting the inspector to select an employee to accompany him; and made minor changes in phraseology, punctuation and style.

**50-405. (3451) No conflict of interests by mine inspector.** A state coal mine inspector may not act as agent for a corporation, superintendent, or manager of a mine, and shall in no manner be in the employ of mining companies, nor shall he be interested in any way in coal mining operations, either as owner, lessee, or otherwise.

**History:** En. Sec. 6, Ch. 120, L. 1911; re-en. Sec. 3451, R. C. M. 1921; amd. Sec. 6, Ch. 267, L. 1974.

#### Amendments

The 1974 amendment deleted a second

sentence relating to annual reports to the governor by the industrial accident board; and made minor changes in phraseology.

**50-406. (3452) Repealed.**

**Repeal**

Section 50-406 (Sec. 7, Ch. 120, L. 1911; Sec. 2, Ch. 38, L. 1945), relating to instru-

ments to be furnished to the state coal mine inspector, was repealed by Sec. 34, Ch. 267, Laws of 1974.

**50-407. (3453) Division to post statement of conditions at some conspicuous location.** The division shall post in some conspicuous location at each mine visited and inspected by it a plain statement of the conditions of the mine, showing what, in its judgment, is necessary for the better protection of the lives and health of persons employed in the mine. The statement, signed by the division inspector, shall give the date of inspection. Where a local union has jurisdiction over the mine inspected, the division shall post three (3) copies of the statement of conditions within one (1) week after making the inspection. It shall also post a copy at the landing used by the workers, stating what number of workers may be permitted to ride on the cage, car or cars at one time.

**History:** En. Sec. 8, Ch. 120, L. 1911; re-en. Sec. 3453, R. C. M. 1921; amd. Sec. 3, Ch. 38, L. 1945; amd. Sec. 3, Ch. 185, L. 1949; amd. Sec. 7, Ch. 267, L. 1974.

**Amendments**

The 1974 amendment substituted references to "division" throughout the section for references to the "state coal mine inspector"; deleted "the number of cubic feet of air per minute in circulation at the last open crosscut of each and every entry, and the last open crosscut in each and every active room or working place, and such other information as he shall deem necessary" from the end of the second sentence; substituted "post three

(3) copies of the statement" in the third sentence for "mail a copy of said statement of conditions to the secretary and district office of the local union having jurisdiction at the mine"; substituted "workers" for "men" in the last sentence; deleted "and at what rate of speed men may be hoisted and lowered on the cage, car or cars in accordance as hereinafter provided for in this act" from the last sentence; deleted a final sentence requiring the inspector to determine whether the code of signals used by engineers and top and bottom workers is conspicuously posted; and made minor changes in phraseology, punctuation and style.

**50-408, 50-409. (3454, 3455) Repealed.**

**Repeal**

Sections 50-408 and 50-409 (Secs. 10, 11, Ch. 120, L. 1911), relating to the testing of

coal mine scales, were repealed by Sec. 43, Ch. 99, Laws 1969.

**50-410 to 50-412. (3457 to 3459) Repealed.**

**Repeal**

Sections 50-410 to 50-412 (Secs. 13 to 15, Ch. 120, L. 1911; Sec. 2, Ch. 20, L. 1921; Sec. 1, Ch. 160, L. 1921; Sec. 4, Ch. 185, L. 1949), relating to charges of neglect of duty by and removal of the

state coal mine inspector, and establishment of a board of examiners to pass on applicants for state inspector, foreman and examiner, were repealed by Sec. 34, Ch. 267, Laws of 1974.

**50-412.1. Division may adopt rules.** The division may adopt rules to carry out the provisions of this chapter, and safety standards for all coal mines in this state.

**History:** En. 50-412.1 by Sec. 8, Ch. 267, L. 1974.

**50-413 to 50-427. (3460 to 3468, 3473 to 3476, 3478) Repealed.**

**Repeal**

Sections 50-413 to 50-427 (Secs. 16 to

18, 20 to 24, 26, 30 to 34, 36, Ch. 120, L. 1911; Secs. 3, 4, Ch. 20, L. 1921; Secs. 2,



4 to 7, Ch. 160, L. 1921; Secs. 5 to 12, Ch. 185, L. 1949), relating to the board of examiners, and examination and appointment of state coal mine inspector, mine foreman, mine examiner and fire boss, were repealed by Sec. 34, Ch. 267, Laws of 1974.

**50-428. (3479) Necessary to have maps of coal mines.** Every operator of every coal mine in this state shall make or cause to be made an accurate map or plan of the mines, drawn to a scale of not less than two hundred feet (200') to one inch (1"), and as much larger as practicable, on which shall appear the name of the state, county, and township in which the mine is located, the designation of the mine, the name of the company or owner, the certificate of the certified engineer or surveyor as to the accuracy and date of the survey, the north point, and the scale to which the drawing is made.

History: En. Sec. 37, Ch. 120, L. 1911; re-en. Sec. 3479, R. C. M. 1921; amd. Sec. 9, Ch. 267, L. 1974.

#### Amendments

The 1974 amendment substituted "certified" for "mining" before "engineer or surveyor" near the end of the section; and made minor changes in style.

**50-429. (3480) Underground survey.** For the underground working the map shall show all power distribution and ventilation in maps and all shafts, slopes, tunnels, or other openings to the surface or to the workings of a contiguous mine; all excavations, entries, rooms and crosscuts; the rise or dip of the seam from the bottom of the shaft, mouth of drift, or slope in either direction to the face of the workings; the location of the fan; the location of the permanent pumps, hauling engines, engine-planes, and fire-walls; the location of any standing water which might prove a menace to life or danger to property from flood; and the line of any contiguous surface outcrop of the seam.

History: En. Sec. 38, Ch. 120, L. 1911; re-en. Sec. 3480, R. C. M. 1921; amd. Sec. 13, Ch. 185, L. 1949; amd. Sec. 10, Ch. 267, L. 1974.

#### Amendments

The 1974 amendment inserted "all power distribution and ventilation in maps and" after "shall show" at the beginning of the section; and made minor changes in phraseology and punctuation.

**50-430. (3481) Map for every seam.** A separate and similar map for all active mining areas, drawn to the same scale in all cases, shall be made of every seam, which shall be worked in any mine, and the maps of all seams shall show all shafts, drifts, tunnels, incline planes, or other passageways connecting them.

History: En. Sec. 39, Ch. 120, L. 1911; re-en. Sec. 3481, R. C. M. 1921; amd. Sec. 11, Ch. 267, L. 1974.

#### Amendments

The 1974 amendment inserted "for all active mining areas" after "map"; and made minor changes in phraseology.

**50-431. (3482) Map of the surface.** Every map or plan, or, at the option of the operator, a separate map, shall show the surface boundary lines contiguous to the workings and pertaining to each mine, also all section or quarter-section lines and corners, town lots and streets, the tracts and side tracts of all railroads, the location of all wagon roads, rivers, streams, ponds, buildings, landmarks, and principal objects on the surface

within the boundary lines; and in all cases, if of an underground mine, it shall be drawn on a transparency so that it can be laid upon the map of the underground workings, and indicate the relative location of the lines and objects on the surface to the excavations of the mine.

**History:** En. Sec. 40, Ch. 120, L. 1911; re-en. Sec. 3482, R. C. M. 1921; amd. Sec. 12, Ch. 267, L. 1974.

an underground mine" for "if of a separate surface map" before "it shall be drawn on a transparency"; and made minor changes in phraseology.

#### Amendments

The 1974 amendment substituted "if of

**50-432. (3483) Copies of maps for division.** The original or true copies of all maps shall be kept in the office at the mine, and true copies shall also be furnished the division within thirty (30) days after their completion. The maps delivered to the division shall become the property of the state. They shall be kept at the office of the division and be open to inspection by all persons interested in them. An examination shall only be made in the presence of a division inspector, and he shall not permit any copies of them to be made without the written consent of the operator or owner of the property, under penalty of removal from office.

**History:** En. Sec. 41, Ch. 120, L. 1911; re-en. Sec. 3483, R. C. M. 1921; amd. Sec. 13, Ch. 267, L. 1974.

"inspector" in the first three sentences; deleted a clause from the second sentence requiring the maps to remain in the inspector's custody; inserted "division" before "inspector" in the last sentence; and made minor changes in punctuation and phraseology.

#### Amendments

The 1974 amendment substituted "division" for "state coal mine inspector" and

**50-433. (3484) Semiannual surveys.** (1) An extension of the last preceding survey of every mine in active operation shall be made once every six (6) months and the result of the survey, with the date, shall be promptly and accurately entered upon the original maps so as to show all changes in plan or new work in the mine, and all extensions of the workings to the most advanced boundary of the workings which have been made since the preceding survey. The changes and extensions shall be entered on the copies of the maps of the division, or new copies furnished it, within thirty (30) days after the last survey is made. When the operator of a mine neglects or refuses, or for any cause not satisfactory to the division fails, for a period of three (3) months, to furnish the division the map or plan of the mine, or a copy, or of the extension, the division may make or cause to be made an accurate map or plan of the mine at the expense of the owner or lessee, and the cost may be recovered from the owner, lessee, or operator, in the same manner as other debts by suit in the name of the state.

(2) The division shall require an extension of the last preceding survey, once every twelve (12) months, of every mine in active operation in which five (5) men or less are employed on any one shift.

**History:** En. Sec. 42, Ch. 120, L. 1911; re-en. Sec. 3484, R. C. M. 1921; amd. Sec. 14, Ch. 185, L. 1949; amd. Sec. 14, Ch. 267, L. 1974.

#### Amendments

The 1974 amendment substituted "division" for "state coal mine inspector" throughout the section; and made minor changes in phraseology, punctuation and style.

**50-434. (3485) Abandoned mines.** (1) When a coal mine is worked out, or is about to be abandoned, or indefinitely closed, the operator shall make or cause to be made a final survey of all available parts of the mine, and the results shall be duly extended on all maps and copies of the mine, to show all excavations and the most advanced workings of the mine, and their exact relations to the boundary or section lines on the surface.

(2) The division may order a survey to be made of the workings of a mine which is about to be abandoned, or of which it has reason to believe the maps are inaccurate, whenever in its judgment the safety of the workers, the support of the surface, the conservation of the property, or the safety of an adjoining mine requires it. The survey shall be at the expense of the state.

**History:** En. Sec. 43, Ch. 120, L. 1911; re-en. Sec. 3485, R. C. M. 1921; amd. Sec. 15, Ch. 267, L. 1974.

**Amendments**

The 1974 amendment substituted "divi-

sion" for "state coal mine inspector" in subsection (2); substituted "workers" for "workmen" in subsection (2); and made minor changes in phraseology and style.

**50-434.1. Boundary lines.** In no case shall the workings of a coal mine be driven nearer than fifty feet (50') to the boundary line of the coal rights pertaining to the mine, except for the purpose of establishing connecting workings between properties owned by the same person, or an underground communication between contiguous mines as provided for elsewhere in rules adopted by the division.

**History:** En. 50-434.1 by Sec. 16, Ch. 267, L. 1974.

**50-435 to 50-465. (3486 to 3508) Repealed.**

**Repeal**

Sections 50-435 to 50-465 (Secs. 44 to 66, Ch. 120, L. 1911; Sec. 1, Ch. 28, L. 1927; Secs. 1 to 3, Ch. 146, L. 1937; Sec. 1, Ch. 145, L. 1939; Secs. 1, 2, Ch. 30, L. 1945; Secs. 1, 2, Ch. 31, L. 1945; Secs. 1, 2,

Ch. 32, L. 1945; Secs. 1, 2, Ch. 33, L. 1945; Secs. 4 to 6, Ch. 38, L. 1945; Secs. 15 to 19, 27, Ch. 185, L. 1949), relating to mining safety regulations, were repealed by Sec. 34, Ch. 267, Laws of 1974.

**50-467. (3510) Repealed.**

**Repeal**

Section 50-467 (Sec. 68, Ch. 120, L. 1911; Sec. 21, Ch. 185, L. 1949), relating to mining safety regulations, was repealed by Sec. 34, Ch. 267, Laws of 1974.

**50-467.1. Nonpermissible internal-combustion engines.** Nonpermissible internal-combustion engines or other machinery which gives off noxious fumes may not be permitted underground in any coal mine.

**History:** En. 50-567.1 by Sec. 17, Ch. 267, L. 1974.

**50-468. (3511) Airways.** The owner, lessee, or operator of every coal mine shall provide and maintain airways of sufficient dimensions, and in no case shall the area of the air-course be less than twenty-five (25) square feet in mines operated in any underground system.



History: En. Sec. 69, Ch. 120, L. 1911; re-en. Sec. 3511, R. C. M. 1921; amd. Sec. 18, Ch. 267, L. 1974.

#### Amendments

The 1974 amendment substituted "in

any underground system" at the end of the section for "on the room and pillar system"; and made minor changes in phraseology.

#### 50-469 to 50-475. (3512 to 3514) Repealed.

##### Repeal

Sections 50-469 to 50-475 (Secs. 70 to 72, Ch. 120, L. 1911; Secs. 28, 29, Ch. 185, L. 1949; Secs. 1, 3, Ch. 188, L. 1959), relating to mining safety regulations, were repealed by Sec. 34, Ch. 267, Laws of 1974.

**50-476. Duties of other employees.** (1) A person may not enter a mine generating firedamp so as to be detected by a safety lamp until the mine examiners make a report to the division.

(2) A person, unless accompanied by the mine examiner, may not go beyond a danger signal until all standing gas discovered has been removed or diluted and rendered harmless by a current of air. A person, being ordered to withdraw by the mine foreman or mine examiner from the mine on account of the interruption of the ventilation, may not re-enter the mine until given permission to do so by the mine foreman.

(3) A person other than the mine examiner may not remove any caution board or danger signal placed at the entrance to any working place, or at the entrance to any old workings in a mine.

(4) A person may not erase or change a mark of reference or monument made in connection with a measurement; change marks or dates or any caution board, or erase or change the dates at room or entry face, when made by the mine examiner, or take for his use a life check not issued to him under rules adopted by the division, or change the checks on cars, wrongfully check a car, or do any act with intent to defraud. A person may not take anything containing fire, except as provided for in rules adopted by the division, into an underground mine.

(5) A person may not place refuse in or obstruct an airway or breakthrough used as an airway. A worker or other person may not damage or alter a water gauge, barometer, air-course, brattice equipment, machinery, or livestock; obstruct or throw open any airway; handle or disturb any part of the machinery of the hoisting engine of a mine, open a door of a mine and neglect to close it; endanger the miners or those working therein; disobey an order given in pursuance of law, or do a willful act endangering the lives or health of persons working there or the security of a mine or machinery.

History: En. 50-476 by Sec. 19, Ch. 267, L. 1974.

**50-477. Notice to inspectors.** Within fifteen (15) days after the close of each calendar month the operator of a coal mine shall report to the division the tons of coal produced each day during the preceding month. Immediate notice must be conveyed to the division by the operator interested:

(1) when an accident occurs whereby a person receives serious or fatal injury;

(2) when work is commenced to sink a shaft, slope or drift, either for hoisting or escape purposes;

(3) when there is intent to abandon a mine or to reopen an abandoned mine;

(4) upon the appearance of a large body of firedamp in a mine, whether accompanied by explosion or not, and upon the occurrence of a serious fire within the mine or on the surface around the mine;

(5) when the workings of a mine are approaching near an abandoned mine believed to contain accumulation of water or gas; or,

(6) upon the accidental closing or intended abandonment of a regularly established passageway to an escape outlet.

History: En. Sec. 50-477 by Sec. 20, Ch. 267, L. 1974.

**50-478. Duty of division.** (1) When advised by an operator of any accident in a coal mine involving loss of life or serious personal injury, the division shall, if it considers it necessary from the facts reported, and in all cases of loss of life, immediately have an inspector go to the scene of the accident within forty-eight (48) hours of notification. Every operator of a coal mine, or his agent, shall make and preserve for the information of the division, upon uniform blanks furnished by the division, a record of all injuries sustained by any employees on the premises.

(2) The division may also make any original or supplementary investigation which it considers necessary as to the nature and cause of an accident, and shall make a record of the circumstances and of the result of the investigations for its files.

(3) The inspection team shall include a division coal mine inspector, the employer or his designee, and a representative of the employees.

(4) The operator shall, upon being notified of a fatality in a coal mine, relay that information promptly to the district office of the miners' organization. The representative of the miners' organization, or some person delegated by him, may enter any coal mine for the purpose of investigating the causes of a fatal accident.

History: En. 50-478 by Sec. 21, Ch. 267, L. 1974.

**50-479. Hoisting—licensing of hoisting engineers.** Hoisting of personnel and licensing of hoisting engineers shall be performed in mines under the provisions of the law and rules and standards adopted by the division.

History: En. 50-479 by Sec. 22, Ch. 267, L. 1974.

**50-480. Inspections and investigations—access to mine—order to close mine or abate violation—notice—hearing and review.** The division may at any time perform such inspections and investigations as it considers necessary in surface and underground mines which are subject to this chapter for the purpose of obtaining, utilizing, and disseminating information relating to health and safety conditions in the mines, the causes of

accidents involving bodily injury or loss of life, or the causes of occupational diseases originating therein, and for the purpose of determining whether there is compliance with a health and safety standard or order issued under this chapter.

History: En. 50-480 by Sec. 23, Ch. 267, L. 1974.

**50-480.1. Inspections—continued.** For the purpose of making an inspection or investigation authorized by this chapter, representatives of the division may enter, upon or through, any mine which is subject to this chapter.

History: En. 50-480.1 by Sec. 24, Ch. 267, L. 1974.

**50-480.2. Imminent danger elimination.** If, upon an inspection of a mine the division finds that the conditions or practices in the mine are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the danger can be eliminated, the division shall determine the extent of the area of the mine throughout which the danger exists, and order the operator of the mine to have all persons (except the persons designated below, whose presence in the area is necessary to eliminate the danger described in the order) withdrawn from and excluded from entering the area:

(1) a person whose presence in the area is necessary in the judgment of the operator of the mine, to eliminate the danger;

(2) a public official whose official duties require him to enter the area;

(3) a legal or technical consultant, or a representative of the employees of the mine, who is a person qualified to make mine examinations, or is accompanied by such a person, and whose presence in the area is necessary in the judgment of the operator of the mine, for the proper investigation of the conditions in the area.

History: En. 50-480.2 by Sec. 25, Ch. 267, L. 1974.

**50-480.3. Inspections—standards violated—abatement.** If, upon an inspection or investigation, the division finds that there has been a failure to comply with a mandatory standard which is applicable to the mine, but that the failure to comply has not created a danger that could reasonably be expected to cause death or serious physical harm in the mine immediately or before the imminence of the danger can be eliminated, it shall determine what would be a reasonable period of time within which the violation should be totally abated and issue a notice fixing a reasonable time for the abatement of the violation. If, upon the expiration of the period of time as originally fixed or extended, the division finds that the violation has not been totally abated, and if it also finds that the period of time should not be further extended, it shall also find the extent of the area which is affected by the violation. The division shall order the operator of the mine to have all persons in the area (excepting the following persons whose presence in the area is necessary to



abate the violation described in the order) to be withdrawn from, and to be excluded from entering the area:

(1) a person whose presence in the area is necessary, in the judgment of the operator of the mine, to abate the violation;

(2) a public official whose official duties require him to enter the area;

(3) a legal or technical consultant, or a representative of the employees of the mine who is a person qualified to make examinations, or is accompanied by such a person, and whose presence in the area is necessary in the judgment of the operator of the mine, for the proper investigation of the conditions in the area.

History: En. 50-480.3 by Sec. 26, Ch. 267, L. 1974.

**50-480.4. Findings and orders.** (1) Findings and orders issued under this chapter shall contain a detailed description of the conditions or practices which cause and constitute a situation of imminent danger or a violation of a mandatory standard, and a description of the area of the mine throughout which persons must be withdrawn and excluded.

(2) Each finding made and notice or order issued by the division shall be given promptly to the operator of the mine to which it pertains, and all the findings, orders, and notices shall be in writing, and shall be signed by the division inspector making them. A notice or order issued by the division under this chapter may be amended, canceled, or revised by the division.

History: En. 50-480.4 by Sec. 27, Ch. 267, L. 1974.

**50-480.5. Order subject to review.** The order of the division shall remain in effect, but shall immediately be subject to review as provided in this chapter.

History: En. 50-480.5 by Sec. 28, Ch. 267, L. 1974.

**50-480.6. Application for hearing.** An operator notified of an order made under section 50-480.2 may apply to the division for a hearing, revision, or amendment of the order. When the division after a hearing upon complaint, or upon its own motion, finds that danger throughout the area of the mine as set out in the order existed at the time of making the inspection, it shall make an order denying a revision, or amendment. However, if it finds that the danger did not exist throughout the area of the mine, it shall make an order consistent with its findings, revising, or amending the order under review.

History: En. 50-480.6 by Sec. 29, Ch. 267, L. 1974.

**50-480.7. Order—no violation—abatement.** An operator notified of an order made under section 50-480.2 may apply to the division for a hearing or revision of the order. If the division finds that there was no violation, it shall make an order rescinding the order under review. If the division

finds that there was a violation, but the violation has since been abated, it shall make an order rescinding the order under review. If the division finds that the violation was not totally abated, it shall make an order consistent with its findings.

History: En. 50-480.7 by Sec. 30, Ch. 267, L. 1974.

**50-480.8. Expeditious hearing by division.** In view of the urgent need for prompt decisions of matters submitted to the division under this chapter, all actions which the division is required to take under this chapter shall be taken as rapidly as practicable, consistent with adequate consideration of the issues involved.

History: En. 50-480.8 by Sec. 31, Ch. 267, L. 1974.

**50-481. Violation of the act—penalties.** (1) When an operator:

(a) violates or fails or refuses to comply with an order, rule, or standard adopted under this chapter, or

(b) interferes with, hinders, or delays the division or its authorized representatives in carrying out any duties under this chapter, or

(c) refuses to admit an authorized representative of the division to a mine which is subject to this chapter, or

(d) refuses to permit the inspection or investigation of a mine, or an accident, injury, or occupational disease occurring in or connected with a mine, or

(e) refuses to furnish the division any information or report requested by the division and which may reasonably be necessary to carry out the provisions of this chapter; a civil action for preventive relief, including, but not limited to, an application for a permanent or temporary injunction, restraining order, or other appropriate order, may be instituted by the division in the district court for the county in which the mine in question is located or in which the mine operator has its principal office.

(2) A person who knowingly:

(a) violates or fails or refuses to comply with an order, rule, or standard adopted under this chapter, or

(b) interferes with, hinders, or delays the division or its authorized representatives in carrying out any duties under this chapter, or

(c) refuses to admit an authorized representative of the division to a mine, or

(d) refuses to permit the inspection or investigation of a mine, or of an accident, injury, or occupational disease occurring in or connected with a mine, or

(e) refuses to furnish the division any information or report requested by the division and which may reasonably be necessary to carry out the provisions of this chapter; is guilty of a misdemeanor, and shall be punished for each offense by a fine of not less than one hundred dollars (\$100), or more than three thousand dollars (\$3,000), or by imprisonment

in the county jail not exceeding six (6) months, or both. In an instance in which the offense is committed by a corporation, an officer or authorized representative of the corporation who knowingly permits the offense to be committed is subject to the same fine or imprisonment, or both.

**History:** En. 50-481 by Sec. 32, Ch. 267, L. 1974.

**50-482. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid parts remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**History:** En. 50-482 by Sec. 33, Ch. 267, L. 1974.

#### Repealing Clause

Section 34 of Ch. 267, Laws 1974 read "Sections 50-406, 50-410, 50-411, 50-412, 50-413, 50-414, 50-415, 50-416, 50-417, 50-418, 50-419, 50-420, 50-421, 50-422, 50-423, 50-424, 50-425, 50-426, 50-427, 50-435, 50-436, 50-437, 50-438, 50-439, 50-440, 50-441, 50-442, 50-443, 50-444, 50-445, 50-446, 50-447, 50-448, 50-449, 50-450, 50-451, 50-452, 50-453, 50-454, 50-455, 50-456, 50-457, 50-458, 50-459, 50-460, 50-461, 50-462, 50-463,

50-464, 50-465, 50-467, 50-469, 50-470, 50-471, 50-472, 50-473, 50-474, 50-475, 50-501, 50-502, 50-503, 50-504, 50-505, 50-506, 50-507, 50-508, 50-509, 50-511, 50-512, 50-513, 50-514, 50-515, 50-516, 50-517, 50-518, 50-519, 50-520, 50-521, 50-522, 50-523, 50-524, 50-525, 50-526, 50-527, 50-528, 50-529, 50-530, and 50-531, R. C. M. 1947, are repealed."

#### Effective Date

Section 35 of Ch. 267, Laws 1974 read "This act is effective January 1, 1975."

### CHAPTER 5—REGULATION OF COAL MINING INDUSTRY—COAL MINING CODE CONTINUED

#### 50-501 to 50-509. (3515 to 3518, 3520 to 3524) Repealed.

##### Repeal

Sections 50-501 to 50-509 (Secs. 73 to 76, 78 to 82, Ch. 120, L. 1911; Sec. 1, Ch. 27, L. 1927; Secs. 7 to 13, Ch. 38, L. 1945;

Secs. 22 to 24, Ch. 185, L. 1949; Sec. 2, Ch. 188, L. 1959), relating to mining safety regulations, were repealed by Sec. 34, Ch. 267, Laws of 1974.

#### 50-511 to 50-531. (3526 to 3535, 3537 to 3546) Repealed.

##### Repeal

Sections 50-511 to 50-531 (Secs. 84 to 93, 95 to 104, Ch. 120, L. 1911; Sec. 1, Ch. 185, L. 1921; Secs. 15 to 21, Ch. 38,

L. 1945; Sec. 1, Ch. 83, L. 1947; Secs. 25, 26, 30, Ch. 185, L. 1949), relating to mining safety regulations, were repealed by Sec. 34, Ch. 267, Laws of 1974.

### CHAPTER 6—REGULATIONS FOR SALE AND MARKETING OF COAL

#### 50-603. (3546.3) Repealed.

##### Repeal

Section 50-603 (Sec. 3, Ch. 104, L. 1927),

relating to the weight of coal, was repealed by Sec. 43, Ch. 99, Laws 1969.

### CHAPTER 7—LOCATION AND RECORD OF MINING AND MILLSITE CLAIMS

Section 50-701. Discovery—notice—marking boundaries—compliance with federal law.  
 50-702. Record of certificate of location.  
 50-702.1. Filing of false mining claims prohibited—punishment.  
 50-704. Recording of affidavit of performance of annual work.

**50-701. (7365) Discovery—notice—marking boundaries—compliance with federal law.** Any person who discovers upon the public domain of



the United States, within the state of Montana, a vein, lode, or ledge of rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, or a placer deposit of gold, or other deposit of minerals having a commercial value which is subject to entry and patent under the mining laws of the United States, may, if qualified by the laws of the United States, locate a mining claim upon such vein, lode, ledge, or deposit in the following manner, viz.:

1. \* \* \* [Same as parent volume.]

2. Within thirty days after posting the notice of location, he shall distinctly mark the location on the ground so that its boundaries can be readily traced. It shall be prima facie evidence that the location is properly marked if the boundaries are defined by a monument at each corner or angle of the claim, consisting of any one of the following kinds: (1) A tree at least eight inches in diameter, and blazed on four sides; (2) A post at least four inches square by four feet six inches in length, set one foot in the ground, unless solid rock should occur at a less depth, in which case the post should be set upon such rock, and surrounded in all cases by a mound of earth or stone at least four feet in diameter by two feet in height. A squared stump of the requisite size, surrounded by such mound, shall be deemed the equivalent of a post and mound; (3) A stone at least six inches square by eighteen inches in length, set two-thirds of its length in the ground, with a mound of earth or stone alongside at least four feet in diameter by two feet in height; or (4) A boulder at least three feet above the natural surface of the ground on the upper side. Where other monuments, or monuments of lesser dimensions than those above described, are used, it shall be a question for the jury, or for the court where the action is tried without a jury, as to whether the location has been marked upon the ground so that its boundaries can be readily traced. Whatever monument is used, it must be marked with the name of the claim and the designation of the corner, either by number or cardinal point.

3. Within sixty (60) days after posting such notice, the locator shall comply with the United States mining laws.

**History:** Earlier acts were those of Feb. 11, 1876, governing location of quartz claims, appearing as Secs. 1477 and 1478, 5th Div. Comp. Stat. 1887.

Ap. p. Sec. 3610, Pol. C. 1895; en. Sec. 1, Ch. 16, L. 1907; Sec. 2283, Rev. C. 1907; re-en. Sec. 7365, R. C. M. 1921; amd. Sec. 1, Ch. 4, Ex. L. 1971. Cal. Civ. C. Sec. 1426.

#### Amendments

The 1971 amendment substituted a new subdivision 3 for the subdivision 3 appearing in the parent volume; corrected a typographical error; and made a minor change in style.

**50-702. (7366) Record of certificate of location.** Within sixty (60) days after posting the notice of location, the locator shall record his location in the office of the county clerk of the county in which the mining claim is situated, and within twenty (20) days thereafter the county clerk shall provide a copy thereof to the department of state lands, Helena, Montana. The record shall consist of a certificate of location for each claim containing:

1. The name of the lode or claim and whether located as a lode or placer claim.

2. The name of the locator or locators, if there be more than one, together with the post-office address of such locator or locators.

3. The date of location, and the description of the claim, with reference to some natural object or permanent monument, as will identify the claim and the section, township, and range wherein the claim is situated (by projected survey lines if located in unsurveyed country).

4. The directions and distances from the discovery point which describe the claim.

The certificate of location must be verified, before some officer authorized to administer oaths, by the locator, or one of the locators if there be more than one, or by authorized agent. In the case of a corporation, the verification may be made by any officer thereof, or by an authorized agent. When the verification is made by an agent, the fact of the agency shall be stated in the affidavit. A certificate of location so verified, or a certified copy thereof, is prima facie evidence of all facts properly recited therein. Failure of the locator or locators to record a certificate of location as herein required shall create a prima facie presumption of intent to abandon. However, recordation after the sixty (60) day period, but before the ground is located by another renews the location and saves the rights of the original locator. Nothing contained in section 50-713 affects the prima facie presumption created by this section.

**History:** Ap. p. Sec. 3612, Pol. C. 1895; amd. Sec. 2, p. 141, L. 1901; amd. Sec. 2, Ch. 16, L. 1907; Sec. 2284, Rev. C. 1907; re-en. Sec. 7366, R. C. M. 1921; amd. Sec. 2, Ch. 4, Ex. L. 1971; amd. Sec. 1, Ch. 428, L. 1973.

#### Amendments

The 1971 amendment deleted "and for the purpose of constituting constructive notice of the location" after "notice of location" in the first sentence of the introductory paragraph; added "and within twenty \* \* \* successor agency" to the first sentence of the introductory paragraph; inserted "for each claim" in the second sentence of the introductory paragraph; added "and whether located as a lode or placer claim" to the end of subdivision 1; added "together with the post-office address of such locator or locators" to the end of subdivision 2; added "and the section \* \* \* unsurveyed country" to the end

of subdivision 3; substituted a new subdivision 4 for former subdivisions 4 and 5; deleted the designation of former subdivision 6 and made it the final paragraph; deleted the former first sentence of the present final paragraph; added the last two sentences to the final paragraph; and made a minor change in style.

The 1973 amendment deleted "and investments" following "department of state lands" near the end of the first sentence in the first paragraph; and made minor changes in style and phraseology.

#### Reference to Natural or Permanent Monument

Fact that location certificate did not refer to a natural or permanent monument was of no significance when contestant found a copy of the certificate at the entrance to the mine. *McCarthy v. Morris*, 159 M 227, 497 P 2d 97.

#### 50-702.1. Filing of false mining claims prohibited—punishment.

Every person who shall offer any location certificate for a placer mining claim, or lode claim, or affidavit of assessment work to be filed in an office of a county clerk of this state on behalf of himself, or for any other person, or any person who shall procure others to do so, knowing that such claim, or certificate or affidavit was not preceded by a proper location of the claim physically upon the ground by the establishment of a proper notice of claim and the designation of the surface boundaries of the claim by substantial posts or monuments as required by the laws of

the state shall be punished by imprisonment in the state penitentiary for not more than five (5) years, or by a fine of not more than five thousand dollars (\$5,000), or by both.

History: En. Sec. 1, Ch. 135, L. 1973.

Effective Date

**Title of Act**

An act prohibiting the filing of false mining claims; providing for a penalty; and providing for an effective date.

Section 2 of Ch. 135, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 5, 1973.

**50-704. (7368) Recording of affidavit of performance of annual work.**

The owner of a lode or placer claim who performs or causes to be performed the annual work, or makes the improvements required by the laws of the United States, as permitted and defined by laws of the United States, in order to prevent the forfeiture of the claim, must, within ninety (90) days after the expiration of the federal annual assessment work period, file in the office of the county clerk of the county in which such claim or claims is situated an affidavit of his own, or an affidavit of the person who performed such work or made the improvements, showing:

1. The name of the mining claim or claims;
2. The location of the claim or claims by section, township, and range (by projected survey lines if located in unsurveyed country);
3. The book and page numbers wherein the original or latest amended relocation for each claim is recorded;
4. The number of days' work done, and the character and value of the improvements placed thereon, or the verified report required by United States mining law if geological, geophysical, or geochemical work or labor is being relied upon;
5. The dates between which such work or improvements were effected;
6. At whose instance the work was done or the improvements made;
7. The actual amount paid for work and improvements, and by whom paid when the same was not done by the owner.

Annual assessment work may be performed or caused to be performed at one (1) or more points within a group of contiguous claims and may be utilized to satisfy annual assessment work requirements upon the group of contiguous claims. Said point or points of work may be performed upon a patented claim. If annual assessment work is performed or caused to be performed at one (1) or more points within a group of contiguous claims, the affidavit of performance of assessment work must be filed for the group of claims. The affidavit, in addition to requirements established by this section for affidavits of performance of assessment work, must contain a description and location of the work done upon the group at a point or points within the group, the specific names of all the claims in the group for whose benefit the work was performed, and the total cost of the work performed.

If group work is claimed for a group of claims crossing county lines, the affidavit required by this section shall be filed for recording within the required time in each of the counties in which such claims are located.



An affidavit of performance of annual assessment work must be verified, before some officer authorized to administer oaths, by the locator, or one of the locators if there be more than one, or by authorized agent. In the case of a corporation, the verification may be made by any officer thereof, or by an authorized agent. When the verification is made by an agent, the fact of the agency shall be stated in the affidavit. Such affidavits, or a certified copy thereof, are prima facie evidence of the facts therein stated. The failure to file such affidavits within the period allowed therefor shall be prima facie evidence that such labor has not been performed and that the owner of the claim or claims has abandoned and surrendered same.

**History:** En. Sec. 1483, 5th Div. Comp. Stat. 1887; amd. Sec. 3614, Pol. C. 1895; re-en. Sec. 7368, R. C. M. 1921; amd. Sec. 3, Ch. 4, Ex. L. 1971; amd. Sec. 1, Ch. 312, L. 1973; amd. Sec. 1, Ch. 112, L. 1974. Cal. Civ. C. Sec. 1426m.

#### Amendments

The 1971 amendment inserted "as permitted and defined by laws of the United States" in the introductory paragraph; substituted "must" for "may" after "forfeiture of the claim" in the introductory paragraph; substituted "ninety (90)" for "twenty" in the introductory paragraph; substituted "expiration of the federal annual assessment work period" for "annual work" in the introductory paragraph; inserted new subdivisions 2 and 3; redesignated former subdivision 2 as subdivision 4 and added to the end "or the verified \* \* \* relied upon"; revised and reworded former subdivision 3 and redesignated it

as subdivision 5; redesignated former subdivisions 4 and 5 as subdivisions 6 and 7; added the three paragraphs after the numbered subdivisions; made the former final paragraph into the fourth sentence of the present final paragraph; and made minor changes in phraseology.

The 1973 amendment deleted "not exceeding ten (10)" following "contiguous claims" in the first and second sentences of the first paragraph following the numbered clauses.

The 1974 amendment inserted "Said point or points of work may be performed upon a patented claim" as the second sentence in the second paragraph.

#### Amount of Work Required

Recorded affidavit was prima facie evidence that annual assessment work was done, and it was not important how much work was done. *McCarthy v. Morris*, 159 M 227, 497 P 2d 97.

### CHAPTER 8—MINING—RIGHTS OF WAY

Section 50-813. Eminent domain for open pit mining—agreement to purchase property required.

50-815. Measure of compensation for property.

50-816. Notice to owners of condemnation for open pit mining—filing of plat.

**50-813. Eminent domain for open pit mining—agreement to purchase property required.** Whenever the right of eminent domain is exercised to acquire estates and rights in land for the purpose of open pit mining of the ores, metals or minerals owned by the plaintiff, the decree shall be granted on condition that the plaintiff protects the public in the immediate area by agreeing to purchase all property within three hundred (300) yards of the surface tract condemned, including vacant lots, provided the owner or owners thereof serve upon the plaintiff and file with the court a written offer stating the amount asked for such property within thirty (30) days from the entry of the court order appointing commissioners in said eminent domain proceeding. In the event the plaintiff and the owner or owners are unable to agree upon the compensation to be paid for such property, the court, upon petition of either party, may proceed to determine the compensation to be paid

for such property in the manner prescribed in Title 93, chapter 99, Revised Codes of Montana, 1947, as amended, for ascertaining the value of property taken through the exercise of the right of eminent domain.

**History:** En. Sec. 1, Ch. 240, L. 1961; after "agreeing to purchase" in the first sentence; increased the distance specified in the first sentence from 300 feet to 300 yards; and deleted "in a residential area" after "vacant lots" in the first sentence.

#### Amendments

The 1973 amendment substituted "all property" for "all residential property"

**50-815. Measure of compensation for property.** (1) The measure of compensation for the property located within three hundred (300) yards of the surfaced tract condemned shall be the fair market value or the value of similar property in a similar area not affected by open pit mining operations, whichever the owner of the surface property shall elect to receive.

(2) The measure of compensation for a building owned by the city, county, or state shall be the value of the cost of replacing the building in a similar area not affected by open pit mining operations.

**History:** En. Sec. 3, Ch. 240, L. 1961; tuted "the property" and "similar property" in subsection (1) for "the residential property" and "similar residential property"; increased the distance specified in subsection (1) from 300 feet to 300 yards; and added subsection (2).

#### Amendments

The 1973 amendment designated the former section as subsection (1); substi-

**50-816. Notice to owners of condemnation for open pit mining—filing of plat.** Any party seeking to condemn property for open pit mining purposes shall serve notice in writing on all owners of property within three hundred (300) yards of the surface tract sought to be condemned or in lieu thereof shall file a plat showing the boundaries of the property sought to be condemned in the office of the county clerk and recorder, and the filing of said plat shall constitute notice to the owner or owners not personally served with written notice as herein provided.

**History:** En. Sec. 4, Ch. 240, L. 1961; ers of property" for "all residential property owners"; and increased the specified distance from 300 feet to 300 yards.

#### Amendments

The 1973 amendment substituted "own-

### CHAPTER 9—CONSOLIDATION OF BOILER AND MINES INSPECTORS UNDER CONTROL OF INDUSTRIAL ACCIDENT BOARD

#### 50-901. (3034) Consolidation boiler, mine and coal mine inspectors.

##### Cross-References

Industrial accident board abolished and functions transferred, sec. 82A-1005 (1).

### CHAPTER 10—STRIP MINING AND RECLAMATION

- Section 50-1034. Short title.  
50-1035. Policy of state—findings.  
50-1036. Definitions.  
50-1037. Orders and rules of board—hearings.

- 50-1038. Administration—functions of department.
- 50-1039. Permit required to engage in strip mining—application for permit—contents—fee—bond.
- 50-1040. Increase or reduction in area—application—fee—bond.
- 50-1041. Prospecting permit—application—contents—reclamation plan—fee—bond.
- 50-1042. Refusal of permit—grounds.
- 50-1043. Reclamation operations—submission and action on plan.
- 50-1044. Area mining required—grading and revegetation—release of bond—alternative plan.
- 50-1045. Planting of vegetation following filling of stripped area.
- 50-1046. Time of commencement of reclamation.
- 50-1047. Planting report—inspection and release of bond.
- 50-1048. Vegetation planted as property of landowner.
- 50-1049. Annual report of reclamation work—map.
- 50-1050. Notice of noncompliance—suspension of permits—conditions required for reinstatement of permits.
- 50-1051. Successive operators.
- 50-1052. Receipts paid into special fund—use of fund.
- 50-1053. Funds received by board—reclamation work by board—rehabilitation of unreclaimed lands.
- 50-1054. Reclamation of lands after bond forfeited.
- 50-1055. Mandamus to compel enforcement of law—action for damage to water supply—damage from surface water—other remedies.
- 50-1056. Violation—civil penalty—injunction—misdemeanor.
- 50-1057. Procedure for hearings and appeals.

### 50-1001 to 50-1017. Repealed.

#### Repeal

Sections 50-1001 to 50-1017 (Secs. 1-4, Ch. 245, L. 1967; Secs. 1-13, Ch. 199, L.

1969), relating to strip coal mining and reclamation of lands, were repealed by Sec. 18, Ch. 224, Laws 1971.

### 50-1018 to 50-1033. Repealed.

#### Repeal

Sections 50-1018 to 50-1033 (Secs. 1 to 16, Ch. 224, L. 1971), relating to open cut or strip mined land reclamation, were repealed by Sec. 26, Ch. 325, Laws 1973

and Sec. 17, Ch. 326, Laws 1973. For present law, see secs. 50-1034 to 50-1057 and 50-1501 to 50-1516. Chapter 391, Laws of 1973 purported to amend section 50-1032 but was void under section 43-515.

**50-1034. Short title.** This act shall be known and may be cited as "The Montana Strip Mining and Reclamation Act."

**History:** En. Sec. 1, Ch. 325, L. 1973.

#### Title of Act

An act creating "The Montana Strip Mining and Reclamation Act" and providing for the control of prospecting for and the strip mining of coal, clay, phosphate rock, and uranium; providing for

permits, reclamation plan requirements, methods of operation, and penalties; providing for the termination of reclamation contracts entered into under chapter 245, Laws of Montana, 1967; repealing sections 50-1018 through 50-1033, R. C. M. 1947; and providing an effective date.

**50-1035. Policy of state—findings.** It being the declared policy of this state and its people

—to maintain and improve the state's clean and healthful environment for present and future generations,

—to protect its environmental life-support system from degradation,

—to prevent unreasonable degradation of its natural resources,

—to restore, enhance, and preserve its scenic, historic, archeologic, scientific, cultural, and recreational sites,



—to demand effective reclamation of all lands disturbed by the taking of natural resources, and

—to require the legislature to provide for proper administration and enforcement, create adequate remedies, and set effective requirements and standards (especially as to reclamation of disturbed lands) in order to achieve the aforementioned objectives,

the legislature hereby finds and declares:

(1) That, in order to achieve the aforementioned policy objectives, promote the health and welfare of the people, control erosion and pollution, protect domestic stock and wildlife, preserve agricultural and recreational productivity, save cultural, historic, and aesthetic values, and assure a long-range dependable tax base, it is reasonably necessary to require, after the effective date of this act, that all strip mining operations be limited to those for which annual permits are granted, that no permit be issued until the operator presents a comprehensive plan for surface reclamation and restoration, together with an adequate performance bond, and the plan is approved, that certain other things must be done, that certain remedies are available, and that certain lands because of their unique or unusual characteristics may not be strip mined under any circumstances, all as more particularly appears in the remaining provisions of this act.

(2) That this act be deemed to be an exercise of the authority granted in the Montana constitution, as adopted June 6, 1972, and in particular, a response to the mandate expressed in article IX thereof, and also be deemed to be an exercise of the general police power to provide for the health and welfare of the people.

History: En. Sec. 2, Ch. 325, L. 1973.

Compiler's Notes

Chapter 325, Laws of 1973 became effective March 16, 1973.

50-1036. Definitions. Unless the context requires otherwise in this act:

(1) "mineral" means coal and uranium;

(2) "overburden" means all of the earth and other materials which lie above a natural mineral deposit and also means such earth and other material after removal from their natural state in the process of strip mining;

(3) "strip mining" means any part of the process followed in the production of mineral by the open cut method including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation, or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral;

(4) "prospecting" means the removal of overburden, core drilling, construction of roads or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit;

(5) "area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited and includes all lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral;

(6) "operation" means all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from a designated strip mine area, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit;

(7) "operator" means a person engaged in strip mining who removes or intends to remove more than ten thousand (10,000) cubic yards of mineral or overburden;

(8) "person" means a person, partnership, corporation, association, or other legal entity, or any political subdivision, or agency of the state;

(9) "method of operation" means the method or manner by which the cut or open pit is made, the overburden is placed or handled, water is controlled and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected;

(10) "topsoil" means the unconsolidated mineral matter naturally present on the surface of the earth that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macro- and micro-organisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth;

(11) "department" means the department of state lands provided for in Title 82A, chapter 11;

(12) "commissioner" means the commissioner of state lands provided for in section 82A-1104;

(13) "board" means the board of land commissioners provided for in article X, section 4 of the constitution of this state;

(14) "reclamation" means backfilling, grading, highwall reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip mining under a plan approved by the department;

(15) "degree" means from the horizontal, and in each case is subject to a tolerance of five per cent (5%) error;

(16) "contour strip mining" means that strip mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench;

(17) "bench" means the ledge, shelf, table, or terraces formed in the contour method of strip mining;

(18) "fill bench" means that portion of a bench or table which is formed by depositing overburden beyond or down slope from the cut section as formed in the contour method of strip mining;

(19) "abandoned" means an operation where no mineral is being produced and where the department determines that the operation will not continue or resume.

**History:** En. Sec. 3, Ch. 325, L. 1973; amd. Sec. 1, Ch. 209, L. 1974; amd. Sec. 1, Ch. 235, L. 1974.

a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 209, Laws of 1974, deleted a reference to "clay" in the definition of "mineral" in subdivision (1).

Chapter 235, Laws of 1974, deleted a reference to "phosphate rock" in the definition of "mineral" in subdivision (1).

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 209 and once by Ch. 235. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made

**50-1037. Orders and rules of board—hearings.** The board:

(1) shall issue after an opportunity for a hearing, orders requiring an operator to adopt the remedial measures necessary to comply with this act and rules adopted under this act;

(2) shall issue after an opportunity for a hearing, a final order directing the department to revoke a permit, when the requirements set forth by the notice of noncompliance, order of suspension, or an order of the board requiring remedial measures have not been complied with according to the terms herein;

(3) shall adopt after an opportunity for a hearing, general rules pertaining to strip mining to accomplish the purposes of this act;

(4) shall conduct hearings under provisions of this act or rules adopted by the board.

**History:** En. Sec. 4, Ch. 325, L. 1973.

**50-1038. Administration—functions of department.** The department:

(1) shall exercise general supervision, administration, and enforcement of this act and all rules and orders adopted under this act;

(2) shall examine and pass upon all plans and specifications submitted by the operator for the method of operation, backfilling, grading, highwall reduction, topsoiling and for the reclamation of the area of land affected by his operation;

(3) shall order the suspension of any permit for failure to comply with this act or any rule adopted under this act;

(4) shall order the halting of any operation that is started without first having secured a permit as required by this act;

(5) shall make investigations and inspections necessary to ensure compliance with this act;

(6) may encourage and conduct investigations, research, experiments and demonstrations, and collect and disseminate information relating to strip mining and reclamation of lands and waters affected by strip mining;

(7) may adopt rules with respect to the filing of reports, the issuance of permits and other matters of procedure and administration.

**History:** En. Sec. 5, Ch. 325, L. 1973.



50-1039. Permit required to engage in strip mining—application for permit—contents—fee—bond. (1) An operator may not engage in strip mining without having first obtained from the department a permit designating the area of land affected by the operation. The permit shall authorize the operator to engage in strip mining upon the area of land described in his application and designated in the permit for a period of one (1) year from the date of its issuance. Such permit shall be renewable from year to year thereafter upon application to the department at least thirty (30) but not more than sixty (60) days prior to the renewal date so long as the operator is in compliance with the requirements of this act, the rules hereunder, and the reclamation plan provided for in section 10 [50-1043] of this act, and agrees to comply with all applicable laws and rules in effect at the time of renewal. Such renewal shall further be subject to the denial provisions of sections 9 and 13 [50-1042 and 50-1046] of this act.

(2) An operator desiring a permit shall file an application which shall contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. Such plan shall reflect thorough advance investigation and study by the operator and shall include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of such use and shall state:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record of the surface of the area of land to be affected by the permit and the owners of record of all surface area within one-half (.5) mile of any part of the affected area;

(c) the names and addresses of the present owners of record of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post-office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this act, and an identification of those permits;

(g) whether the applicant is in compliance with subsection (2) of section 17 [50-1050] and whether every officer, partner, director, or any individual owning of record or beneficially (alone or with associates) if known, ten per cent (10%) or more of any class of stock of the applicant, is subject to any of the provisions of subsection (2) of section 17 [50-1050] and he shall so certify, and whether any of the foregoing parties or persons have ever had a strip mining license or permit issued by any other state or federal agency revoked, or have ever forfeited a strip mining bond or a security deposited in lieu of a bond and if so, a detailed explanation of the facts involved in each case must be attached;

(h) the names and addresses of any persons who are engaged in strip mining activities on behalf of the applicant;

(i) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(j) the results of any test borings or core samplings which the applicant or his agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of such minerals, including the acidity, sulphur content, and trace mineral elements of any coal seam, as well as the British thermal unit (B.T.U.) content of such seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application shall contain two (2) copies each of two (2) sets of geologic cross-sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set shall depict subsurface conditions at five hundred (500) foot intervals across the surface and shall run at a ninety (90) degree angle to the other set. Each cross-section shall depict the thickness and geological character of all known strata beginning with the topsoil;

(k) the name and date of a daily newspaper of general circulation within the county in which the applicant has prominently published an announcement of his application for a strip mining permit, and a detailed description of the area of land to be affected should a permit be granted;

(l) such other or further information as the department may require.

(3) The application for a permit shall be accompanied by two (2) copies of all maps meeting the requirements of the subsections below. The maps shall:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining and the boundaries of surface properties and names of owners of record of the affected area and within one thousand (1,000) feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within one thousand (1,000) feet of such area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the drainage plan on and away from the area of land affected. This plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge;

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the location of test boring holes;

(j) show the surface location lines of any geologic cross-sections which have been submitted;

(k) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the area to be affected, and the locations generally of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs and trees;

(l) be certified as follows: "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the strip mining laws of this state." The certification shall be signed and notarized. The department may reject a map as incomplete if its accuracy is not so attested;

(m) contain such other or further information as the department may require.

(4) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, grading work, highwall reduction, topsoiling, planting, revegetating, and a reclamation plan for the area affected by the operation, which proposals shall meet the requirements of this act and rules adopted under this act.

(5) An application fee of fifty dollars (\$50) shall be paid before the permit required in this section shall be issued. The operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the board (on the recommendation of the commissioner) of not less than two hundred dollars (\$200) nor more than twenty-five hundred dollars (\$2,500) for each acre or fraction thereof of the area of land affected, with a minimum bond of two thousand dollars (\$2,000), conditioned upon the faithful performance of the requirements set forth in this act and of the rules of the board. In determining the amount of the bond within the above limits, the board shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of backfilling, grading, highwall reduction, topsoiling, and reclamation to be required; but in no event shall the bond be less than the total estimated cost to the state of completing the work described in the reclamation plan.

**History:** En. Sec. 6, Ch. 325, L. 1973.

**50-1040. Increase or reduction in area—application—fee—bond.** The department may increase or reduce the area of land affected by an operation under a permit on application by an operator, but an increase may not extend the period for which an original permit was issued. An operator may, at any time within one (1) year from the date of issuance of the permit, apply to the department for an amendment of the permit so as to increase or reduce the acreage affected by it. The operator shall file an application and map in the same form and with the same content as required for an original application under this act



and shall pay an application fee of fifty dollars (\$50) and shall file with the department a supplemental bond in the amount to be determined under section 6 [50-1039] for each acre or fraction of an acre of the increase approved. If the department approves a reduction in the acreage covered by the original or supplemental permit, it shall release the bond for each acre reduced, but in no case shall the bond be reduced below two thousand dollars (\$2,000), except as provided in subsection (5) of section 6 [50-1039].

History: En. Sec. 7, Ch. 325, L. 1973.

**50-1041. Prospecting permit—application—contents—reclamation plan—fee—bond.** (1) On and after the effective date of this act prospecting by any person on land not included in a valid strip mining permit shall be unlawful without possessing a valid prospecting permit issued by the department as provided in this section. No prospecting permit shall be issued until the operator submits an application, the application is examined, amended if necessary, and approved by the department, and adequate reclamation performance bond is posted, all of which prerequisites must be done in conformity with the requirements of this act.

(2) An application for a prospecting permit shall be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application shall include among other things, a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface mining map and reclamation plan under this act. The department shall determine, by rules and regulations, the precise nature of such required prospecting map and reclamation plan. Any operator who intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing aquifers, and such other information as may be required by the department. The applicant must state what types of prospecting and excavating techniques will be employed on the affected land. The application shall also include any other or further information the department may require.

(3) The application shall be accompanied by a fee of one hundred dollars (\$100). This fee shall be used as a credit toward the strip mining permit fee provided by this act if the area covered by the prospecting permit becomes covered by a valid surface mining permit obtained before or at the time the prospecting permit expires.

(4) Before the department gives final approval to the prospecting permit application, the applicant shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in the same manner for strip mining reclamation and revegetation bonds under this act.

(5) In the event that the holder of a prospecting permit desires to strip mine the area covered by the prospecting permit, and has fulfilled all the requirements for a strip mining permit, the department may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for a strip mining permit. Any land actually affected by

prospecting or excavating under a prospecting permit and not covered by the strip mining reclamation plan shall be promptly reclaimed.

(6) The prospecting permit shall be valid for one (1) year, and shall be subject to renewal, suspension, and revocation in the same manner as strip mining permits under this act.

(7) The holder of the prospecting permit shall file with the department the same progress reports, maps, and revegetation progress reports, as are required of strip mining operators under this act.

History: En. Sec. 8, Ch. 325, L. 1973.

Compiler's Notes

Chapter 325, Laws of 1973, became effective March 16, 1973.

**50-1042. Refusal of permit—grounds.** (1) An application for a prospecting or strip mining permit shall not be approved by the department if there is found on the basis of the information set forth in the application, an on-site inspection, and an evaluation of the operation by the department that the requirements of the act or rules will not be observed or that the proposed method of operation, backfilling, grading, highwall reduction, topsoiling, revegetation, or reclamation of the affected area cannot be carried out consistent with the purpose of this act.

(2) The department shall not approve the application for prospecting or strip mining permit where the area of land described in the application includes land having special, exceptional, critical, or unique characteristics, or that mining or prospecting on that area would adversely affect the use, enjoyment, or fundamental character of neighboring land having special, exceptional, critical, or unique characteristics. For the purposes of this act, land is defined as having such characteristics if it possesses special, exceptional, critical or unique:

(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock; or

(b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former ecological role in the reasonable foreseeable future; or

(c) ecological importance, in the sense that the particular land has such a strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipitate a system-wide reaction of unpredictable scope or dimensions; or

(d) scenic, historic, archeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. In applying this subsection, particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.

(3) If the department finds that the overburden on any part of the area of land described in the application for a prospecting or strip mining permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds, landslides, or water pollution cannot feasibly be prevented, the department shall delete that part of the land described in the application upon which the overburden exists.

(4) If the department finds that the operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property, the department shall delete those areas from the prospecting or strip mining permit application before it can be approved.

History: En. Sec. 9, Ch. 325, L. 1973.

**50-1043. Reclamation operations—submission and action on plan.** (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this act, shall reclaim and revegetate the land affected by his operation. Under the provisions of this act and rules adopted by the board, an operator shall prepare and carry out a method of operation, plan of grading, backfilling, highwall reduction, topsoiling and a reclamation plan for the area of land affected by his operation. In developing a method of operation, and plans of backfilling, grading, highwall reduction, topsoiling and reclamation, all measures shall be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams and all other public property from soil erosion, landslides, water pollution, and hazards dangerous to life and property. The reclamation plan shall set forth in detail the manner in which the applicant intends to comply with this section and sections 11, 12 and 13 [50-1044, 50-1045 and 50-1046] of this act. The plan shall be submitted to the department and the department shall notify the applicant by registered mail within one hundred twenty (120) days after receipt of the plan and complete application if it is or is not acceptable. The department may extend the one hundred twenty (120) days an additional one hundred twenty (120) days upon notification of the operator in writing. If the plan is not acceptable, the department shall set forth the reasons why the plan is not acceptable and it may propose modifications, delete areas, or reject the entire plan. A landowner, operator, or any person aggrieved by the decision of the department may, by written notice, request a hearing by the board. The board shall notify the person by registered mail within twenty (20) days after the hearing of its decision. Every reclamation plan shall be subject to annual review and modification.

(2) In addition to the method of operation, grading, backfilling, highwall reduction, topsoiling and reclamation requirements of this act and rules adopted under this act, the operator, consistent with the directives of subsection (1) of this section shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid producing, toxic, undesirable, or creating a hazard;

(b) seal off, as directed by rules, any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff water so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;



(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, surface damage to adjacent lands and water pollution, ensure public safety, and for other purposes.

(3) An operator may not throw, dump, pile or permit the dumping, piling, or throwing or otherwise placing any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which a bond has been posted under section 6 [50-1039], or place the materials described in this section in such a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of the area of land which is under permit and for which a bond has been posted under section 6 [50-1039].

History: En. Sec. 10, Ch. 325, L. 1973.

**50-1044. Area mining required—grading and revegetation—release of bond—alternative plan.** (1) Area strip mining, a method of operation which does not produce a bench or fill bench, is required. All highwalls must be reduced and the steepest slope of the reduced highwall shall be no greater than twenty (20) degrees from the horizontal. Highwall reduction shall be commenced at or beyond the top of the highwall and sloped to the graded spoil bank. Reduction, backfilling, and grading shall eliminate all highwalls and spoil peaks. The area of land affected shall be restored to the approximate original contour of the land. When directed by the department, the operator shall construct in the final grading, such diversion ditches, depressions, or terraces as will accumulate or control the water runoff. Additional restoration work may be required by the department according to rules adopted by the board.

(2) In addition to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the board. These rules may require any measure whatsoever to accomplish the purpose of this act.

(3) All available topsoil shall be removed in a separate layer, guarded from erosion and pollution, kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to removal, and returned as the top layer after the operation has been back-filled and graded; provided that the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil.

(4) As determined by rules of the board, time limits shall be established requiring backfilling, grading, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, grading, and topsoiling shall be completed before necessary equipment is moved from the operation.

(5) When the backfilling, grading, and topsoiling have been completed and approved by the department, the commissioner may release so much of the bond which was filed for that portion of the operation as the commissioner may determine, provided that no less than two hundred dollars (\$200) per acre shall be retained by the department until such time as the planting and revegetation is done according to law and approved by the department, at which time the commissioner shall release the bond in the remaining amount.

(6) An operator may propose alternative plans other than backfilling, grading, highwall reduction, or topsoiling if the restoration will be consistent with the purpose of this act. These plans shall be submitted to the department, and, after consultation with the landowner, if the plans are approved by the board and complied with within the time limits as may be determined by the board as being reasonable for carrying out the plans, the backfilling, grading, highwall reduction, or topsoiling requirements of this act may be modified by the board. An operator who proposes alternative plans that will affect an existing permit shall comply with the notice requirement of section 6 (2) (k) [50-1039 (2) (k)].

History: En. Sec. 11, Ch. 325, L. 1973.

**50-1045. Planting of vegetation following filling of stripped area.** After the operation has been backfilled, graded, topsoiled, and approved by the department, the operator shall prepare the soil and plant such legumes, grasses, shrubs, and trees upon the area of land affected as are necessary to provide a suitable permanent diverse vegetative cover capable of:

(a) feeding and withstanding grazing pressure from a quantity and mixture of wildlife and livestock at least comparable to that which the land could have sustained prior to the operation;

(b) regenerating under the natural conditions prevailing at the site, including occasional drought, heavy snowfalls, and strong winds; and

(c) preventing soil erosion to the extent achieved prior to the operation.

The seed or plant mixtures, quantities, method of planting, type and amount of lime or fertilizer, mulching, irrigation, fencing, and any other measures necessary to provide a suitable permanent diverse vegetative cover shall be defined by rules of the board.

History: En. Sec. 12, Ch. 325, L. 1973.

**50-1046. Time of commencement of reclamation.** The operator shall commence the reclamation of the area of land affected by his operation as soon as possible after the beginning of strip mining of that area in accordance with plans previously approved by the department. Those grading, backfilling, topsoiling, and water management practices that are approved in the plans shall be kept current with the operation as defined by rules of the board and a permit or supplement to a permit may not be issued, if in the discretion of the department, these practices are not current.

History: En. Sec. 13, Ch. 325, L. 1973.

**50-1047. Planting report—inspection and release of bond.** (1) At least sixty (60) days prior to the date of each permit expiration, the operator shall file a planting report with the department on a form to be prescribed and furnished by the department, giving the following information:

- (a) identification of the operation;
  - (b) the type of planting or seeding, including mixtures and amounts;
  - (c) the date of planting or seeding;
  - (d) the area of land planted;
  - (e) any other relevant information the department requires.
- (2) All planting reports shall be certified by the operator.

(3) Inspection and evaluation for permanent diverse vegetative cover shall be made as soon as it is possible to determine if a satisfactory stand has been established. If the department determines that a satisfactory permanent diverse vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for a hearing; but in no event shall such remaining bond be released prior to a period of five (5) years from the initial planting provided for in section 12 [50-1045] of this act.

History: En. Sec. 14, Ch. 325, L. 1973.

**50-1048. Vegetation planted as property of landowner.** All legumes, grasses, shrubs, and trees which are planted or seeded on the area of land affected as required by this act or rules adopted under this act, become the property of the landowner, after complete release of the bond, unless the operator and the landowner agree otherwise.

History: En. Sec. 15, Ch. 325, L. 1973.

**50-1049. Annual report of reclamation work—map.** Within sixty (60) days after each date of expiration of a permit, the operator shall annually file with the department a report stating the exact number of acres of land affected by the operation, the extent of the reclamation already accomplished by him, and any other information required by the rules of the department and the board. The report shall be accompanied by a copy of the map filed with the original application which shall show any revisions made necessary by results of the operation.

History: En. Sec. 16, Ch. 325, L. 1973.

**50-1050. Notice of noncompliance—suspension of permits—conditions required for reinstatement of permits.** (1) If any of the requirements of this act or rules or orders of the department and the board have not been complied with within the time limits set by the department or the board or by this act, the department shall serve a notice of noncompliance on the operator, or where found necessary, the commissioner shall order the suspension of a permit. The notice or order shall be handed to the operator in person or served by registered mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension shall specify in what respects the operator



has failed to comply with this act or the rules or orders of the department and the board. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set therein, the permit may be revoked by order of the board and the performance bond forfeited to the department.

(2) Any additional permits held by an operator whose mining permit has been revoked shall be suspended and the operator is not eligible to receive another permit or to have the suspended permits reinstated until he has complied with all the requirements of this act in respect to former permits issued him. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state, or the operator has paid into the reclamation account a sum together with the value of the bond, the board finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in non-compliance or violation of this act.

History: En. Sec. 17, Ch. 325, L. 1973.

**50-1051. Successive operators.** Where one operator succeeds another at an uncompleted operation, either by sale, assignment, lease, or otherwise, the department may release the first operator from all liability under this act as to that particular operation if both operators have been issued a permit and have otherwise complied with the requirements of this act, and the successor operator assumes as part of his obligation under this act, all liability for the reclamation of the area of land affected by the former operator.

History: En. Sec. 18, Ch. 325, L. 1973.

**50-1052. Receipts paid into special fund—use of fund.** All fees, forfeit funds, and other moneys available or paid to the department under the provisions of this act shall be placed in the state treasury and credited to a special agency account to be designated as the strip mining and reclamation fund. This fund shall be available to the department by appropriation and shall be expended for the administration and enforcement of this act and for the reclamation and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purposes of this act until expended or until appropriated by subsequent legislative action.

History: En. Sec. 19, Ch. 325, L. 1973.

**50-1053. Funds received by board—reclamation work by board—rehabilitation of unreclaimed lands.** (1) The board may receive any federal funds, state funds, or any other funds for the reclamation of land affected by strip mining. The board may have reclamation work done by its own employees or by employees of other governmental agencies, soil conservation districts, or through contracts with qualified persons.

(2) Any funds or any public works programs available to the board shall be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining that have not been reclaimed and rehabilitated in accordance with the standards of this act.

History: En. Sec. 20, Ch. 325, L. 1973.

**50-1054. Reclamation of lands after bond forfeited.** The board may reclaim, in keeping with the provisions of this act, any affected lands with respect to which a bond has been forfeited and to use moneys appropriated from the strip mining and reclamation fund for such purposes.

History: En. Sec. 21, Ch. 325, L. 1973.

**50-1055. Mandamus to compel enforcement of law—action for damage to water supply—damage from surface water—other remedies.** (1) A resident of this state, with knowledge that a requirement of this act or a rule adopted under this act, is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the land is located. The court, if it finds that a requirement of this act or a rule adopted under this act, is not being enforced shall order the public officer or employee, whose duty it is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground source other than a subterranean stream having a permanent, distinct, and known channel, may sue an operator to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from strip mining.

(4) A servient tract of land is not bound to receive surface water contaminated by strip mining on a dominant tract of land, and the owner of the servient tract may sue an operator to recover the damages proximately resulting from the natural drainage from the dominant tract of surface waters contaminated by strip mining on the dominant tract.

(5) This section does not create, modify, or affect any right, liability, or remedy other than as expressly provided in this section.

History: En. Sec. 22, Ch. 325, L. 1973.

**50-1056. Violation—civil penalty—injunction—misdemeanor.** (1) A person or operator who violates any of the provisions of this act or rules

or orders adopted under this act shall pay a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for the violation, and an additional civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each day during which a violation continues, and may be enjoined from continuing such violations as hereinafter provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the commissioner, sue for the recovery of the penalties provided in this section for, and bring an action for a restraining order, temporary or permanent injunction, against an operator or other person violating or threatening to violate an order adopted under this act.

(3) A person who willfully violates any of the provisions of this act, or any determination or order adopted under this act which has become final is guilty of a misdemeanor and shall be fined not less than five hundred dollars (\$500) and not more than five thousand dollars (\$5,000). Each day on which a violation occurs constitutes a separate offense.

**History:** En. Sec. 23, Ch. 325, L. 1973.

**50-1057. Procedure for hearings and appeals.** All hearings and appeal procedures shall be in accordance with sections 82-4209 through 82-4217.

**History:** En. Sec. 24, Ch. 325, L. 1973.

#### **Separability Clause**

Section 25 of Ch. 325, Laws 1973 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

#### **Repealing Clause**

Section 26 of Ch. 325, Laws 1973 read "Sections 50-1018 through 50-1033, R. C. M. 1947, are repealed."

#### **Temporary Provisions**

Section 27 of Ch. 325, Laws 1973 read "Every operator shall within ninety

(90) days after the effective date of this act file with the department an application for a permit."

Section 28 of Ch. 325, Laws 1973 read "Ninety (90) days after the effective date of this act, the state shall proceed to cancel, according to their terms, all existing contracts entered into pursuant to chapter 245, Laws of Montana, 1967. If the contract does not provide according to its terms, for the cancellation, it shall be terminated and void within two hundred seventy (270) days from the effective date of this act."

#### **Effective Date**

Section 29 of Ch. 325, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 16, 1973.

## **CHAPTER 11—DREDGE MINING—PRESERVATION OF LANDS**

(Repealed—Section 116, Chapter 428, Laws of 1973)

### **50-1101 to 50-1114. Repealed.**

#### **Repeal**

Sections 50-1101 to 50-1114 (Secs. 1 to 14, Ch. 123, L. 1969), relating to dredge mining and preservation of lands, were repealed by Sec. 116, Ch. 428, Laws 1973.

#### **Unconstitutionality**

This act is repugnant to section 23, article V of the 1889 constitution, in that it purports to regulate sluice washing without mentioning that process in its title; and it violates the fourteenth



amendment to the United States Constitution in that it exempts open pit mining, strip coal mining and certain other types of operations without valid

reason for a distinction. *Sigety v. State Board of Health*, 157 M 48, 482 P 2d 574, distinguished in 490 P 2d 221, 226.

## CHAPTER 12—RECLAMATION OF MINING LANDS

- Section 50-1201. Legislative observations and finding.  
 50-1202. Purposes of act.  
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 50-1222. Violation penalties.  
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 50-1224. Exemption of sample collectors.  
 50-1225. Notice of noncompliance—suspension of permits.  
 50-1226. Prior operating permits exempt—exploration licenses and development permits remain in effect.

**50-1201. Legislative observations and finding.** The extraction of mineral by mining is a basic and essential activity making an important contribution to the economy of the state and the nation. At the same time, proper reclamation of mined land and former exploration areas not brought to mining stage is necessary to prevent undesirable land and surface water conditions detrimental to the general welfare, health, safety, ecology, and property rights of the citizens of the state. Mining and exploration for minerals takes place in diverse areas where geological, topographical, climatic, biological and sociological conditions are significantly different, and reclamation specifications must vary accordingly. It is not practical to extract minerals or explore for minerals required by our society without disturbing the surface or subsurface of the earth and without producing waste materials, and the very character of many types of mining operations precludes complete restoration of the land to its original condition. The legislature finds that land reclamation as provided in this act will allow exploration for and mining of valuable minerals while adequately providing for the subsequent beneficial use of the lands to be reclaimed.

**History:** En. Sec. 1, Ch. 252, L. 1971.

**Title of Act**

An act requiring the licensing of persons engaged in mining exploration and related activities; requiring permits for the conduct of development, mining and

related activities; providing for the reclamation of explored, developed, and mined land; providing for the administration and enforcement of said act by the board of state lands and investments; and providing for an appeal procedure; and providing an effective date.

**50-1202. Purposes of act.** The purposes of this act are to provide: (i) that the usefulness, productivity and scenic values of all lands and surface waters involved in mining and mining exploration within the boundaries and lawful jurisdiction of the state will receive the greatest reasonable degree of protection and reclamation to beneficial use; (ii) authority for co-operation between private and governmental entities in carrying this act into effect; (iii) for the recognition of the recreational and aesthetic values of land as a benefit to the state of Montana; and (iv) priorities and values to the aesthetics of our landscape, waters and ground cover. Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific instance, the basic objective will be to establish, on a continuing basis, the vegetative cover, soil stability, water condition and safety condition appropriate to any proposed subsequent use of the area.

**History:** En. Sec. 2, Ch. 252, L. 1971.

**50-1203. Definitions.** As used in this act, unless the context indicates otherwise: (1) "Surface mining" shall mean and include all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits thereby exposed, including, but not limited to, open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and any and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining shall not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium nor excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

(2) "Unit of surface mined area" shall mean and include that area of land and surface water included within an operating permit actually disturbed by surface mining during each twelve-month period of time, beginning at the date of the issuance of the permit, and shall comprise and include the area from which overburden and/or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations which, by virtue of such use, are thereafter susceptible to erosion in excess of the surrounding undisturbed portions of land.

(3) "Disturbed land" shall mean and include that area of land or surface water disturbed, beginning at the date of the issuance of the permit, and shall comprise that area from which the overburden, and/or minerals have been removed; tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or covering resulting from said operation and which has not been previously reclaimed under the reclamation plan.

(4) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(5) "Underground mining" shall mean and include all methods of mining other than surface mining.

(6) "Person" shall mean and include any person, corporation, firm, association, partnership or other legal entity engaged in exploration for or development or mining of minerals on or below the surface of the earth.

(7) "Mineral" shall mean and include any ore, rock or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future usage, refinement or smelting.

(8) "Exploration" shall mean and include all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, as well as all roads made for the purpose of facilitating exploration, except as noted in section 20 [50-1220] and section 24 [50-1224] herein.

(9) "Development" shall mean and include all operations between exploration and mining.

(10) "Mining" shall be deemed to have commenced at such time as the operator shall first mine ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or shall first take bulk samples for metallurgical testing in excess of aggregate of ten thousand (10,000) short tons.

(11) "Reclamation plan" shall mean and include the operator's written proposal, as required and approved by the board for reclamation of the land that will be disturbed, which proposal shall include to the extent practical at the time of application for a developing or operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) Plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed, and proposed method of accomplishment;

(c) Manner and type of revegetation or other surface treatment of disturbed areas;

(d) Procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) Method of disposal of mining debris;

(f) Method of diverting surface waters around the disturbed areas where necessary to prevent pollution of such waters or unnecessary erosion;



(g) Method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) Such maps and other supporting documents as may be reasonably required by the department;

(i) A time schedule for reclamation that meets the requirements of section 9 [50-1209] of this act.

(12) "Vegetative cover" as used in this act shall mean the type of vegetation, grass, shrubs, trees, or any other form of natural cover deemed suitable at time of reclamation.

(13) "Board" shall mean the board of land commissioners, or such state employee or state agency as may succeed to its powers and duties under this act.

(14) "Department" shall mean the department of state lands.

(15) "Small miner" shall mean any person, firm or corporation engaged in the business of mining who does not remove from the earth during any twenty-four (24) hour period material in excess of one hundred (100) tons in the aggregate.

History: En. Sec. 3, Ch. 252, L. 1971; amd. Sec. 1, Ch. 281, L. 1974.

(11)(h); substituted "board of land commissioners" for "Board of State Lands and Investments" in subdivision (13); and substituted the definition of "Department" for definitions of "Director" and "administrator" in subdivision (14).

#### Amendments

The 1974 amendment substituted "department" for "director" in subdivision

**50-1204. Administration—rules and regulations—employment of supervisors.** The board is charged with the responsibility of administering this act. In order to implement its terms and provisions, the board shall from time to time promulgate such rules and regulations as the board shall deem necessary. The board may delegate such powers, duties and functions to the department as it deems necessary for the performance of its duties as administrator of this act. The board shall employ experienced, qualified persons in the field of mined land reclamation, who for the purpose of this act, are hereinafter referred to as supervisors.

History: En. Sec. 4, Ch. 252, L. 1971; amd. Sec. 2, Ch. 281, L. 1974.

#### Amendments

The 1974 amendment substituted "the department" in the third sentence for "its director and staff members."

**50-1205. Investigations, research and experiments in reclamation.** The board shall have the authority to conduct or authorize investigations, research, experiments and demonstrations in reclamation and to collect and disseminate nonconfidential information relating to mining.

History: En. Sec. 5, Ch. 252, L. 1971.

**50-1206. Co-operation with other agencies—receipt and expenditure of funds.** The board shall co-operate with other governmental and private agencies in this state and other states and agencies of the federal government, and may reasonably compensate them for any services the board requests that they provide. The board may receive federal funds, state funds, and any other funds and, within the limits imposed by the grant,

expend them for reclamation of land affected by mining or exploration and for purposes enumerated in section 9 [50-1209] of this act.

**History:** En. Sec. 6, Ch. 252, L. 1971.

**50-1207. Exploration license and development permit—duration and renewal—requirements.** (1) Effective sixty (60) days after the date on which the board shall first promulgate its regulations as authorized by section 4 [50-1204] of this act, no person shall engage in exploration or development in the state without first obtaining an exploration license or development permit from the board to do so, such license or permit to be issued for a period of one (1) year from date of issue and to be renewable from year to year on application therefor filed at any time within the thirty (30) days next preceding the expiration of the current license or permit and payment of like fee as required for a new license or permit; provided that the applicant for renewal is not then held by the board to be in violation of any provision of this law. Such license or permit shall be subject to suspension and revocation as provided by this act.

(2) An exploration license shall be issued to any applicant therefor who shall: (i) pay a fee of five dollars (\$5) to the board; (ii) agree to reclaim any surface area damaged by the applicant during exploration operations, all as may be reasonably required by the board, (iii) not be in default of any other reclamation obligation under this law.

(a) An application for an exploration license shall be made in writing, notarized and submitted to the department in duplicate upon forms prepared and furnished by it. The application shall include an exploration map or sketch in sufficient detail to locate the area to be explored and to determine whether significant environmental problems would be encountered. The department shall, by rules and regulations, determine the precise nature of such exploration map or sketch. The applicant must state what types of prospecting and excavation techniques will be employed in disturbing the land.

(b) Upon filing of any certificate of claim location as permitted by federal and state mining laws and regulations, the locator shall provide copies of said certificates to the board.

(c) Prior to the issuance of an exploration license, the applicant shall file with the department a reclamation and revegetation bond in a form and amount as determined by the department in accordance with section 50-1211.

(d) In the event that the holder of an exploration permit desires to mine or develop the area covered by the exploration license and has fulfilled all of the requirements for a development or operating permit, the department may allow the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete reclamation plan submitted with the application for a development or operating permit. Any land actually affected by exploration or excavation under an exploration license and not covered by the development or operating reclamation plan shall be reclaimed within two (2) years after the completion of exploration or abandonment of the site, in a manner acceptable to the department.

(3) An application for a development permit shall be made in writing, notarized and submitted to the department in duplicate upon forms prepared and furnished by it. An application shall contain the following:

- (a) a twenty-five dollar (\$25) application fee;
- (b) a description of the area within which development is to be conducted;
- (c) a suitable map or aerial photograph showing topographic, cultural and drainage features;
- (d) a statement of proposed development methods, i.e., drilling, trenching, etc., and the location of primary support roads and facilities;
- (e) an estimate of the acreage expected to be disturbed in the twelve (12) months following issue of the permit, together with a map of the general area of the development operations for a like period. If the board shall, on good cause, consider the operator's estimate of the quantity of surface to be disturbed to be more than twenty per cent (20%) below what the board considers correct in the circumstances, it may by order require the operator to increase the amount of his bond accordingly.
- (f) a proposed reclamation plan for lands to be disturbed in the next twelve (12) months. Such plan must be approved by the department prior to the permit issuance;

(g) an affidavit, as may be required by the board, showing that any lands disturbed by exploration, development, or mining in the state of Montana by applicant within two years prior to the application for said permit is or is in course of being reclaimed in accordance with the provisions of this act; or submission of an affidavit and such supporting documents and evidence as may be required by the board showing that any lands disturbed by exploration, development, or mining by applicant in the state of Montana during the two (2) years prior to the application for said permit will be restored in accordance with the provisions of this act.

(h) a reclamation and revegetation bond in form and amount to be determined by the department in accordance with section 50-1211, prior to the issuance of a development permit.

(4) Upon receipt of a complete development application the department shall, within sixty (60) days, notify the applicant that the reclamation plan is or is not acceptable. If the plan is not acceptable the department shall notify the applicant, in writing, of the deficiencies. Failure of the department to so act within that period shall constitute approval of the application and the permit shall be issued promptly thereafter.

(5) Employees of persons holding a valid license or permit under this act shall be deemed included in and covered by such license or permit.

(6) Upon proper application by the holder of an exploration license or development permit, the board may excuse such holder from reclamation obligations with reference to any specified openings or excavations exposing geological indications or phenomena of especial interest, even though the licensee does not apply or have any intention to apply for development license or operating permit for the land in which such openings or excavations have been made.



History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974.

#### Amendments

The 1974 amendment added the final sentence to subsection (1); deleted "unless the applicant shall have applied for and been issued a development or operating permit for the lands so damaged" from item (ii) in subsection (2); rewrote subdivision (2)(a) which read "Except as hereafter provided, the holder of such license shall not be compelled to disclose the area of his exploration operations, except where charged with a delinquency

in performing reclamation obligations hereunder"; added subdivisions (2)(c) and (2)(d); rewrote the first sentence of subsection (3) which read "A development permit shall be issued to any applicant therefor that shall meet the following requirements"; added the second sentence to subdivision (3)(f); added subdivision (3)(h); rewrote subsection (4) which read "Following approval of a development plan, the operator shall be required to file a performance bond in accordance with provisions of this act"; and made minor changes in phraseology.

**50-1208. Operating permit—fee—contents of application.** (1) Effective sixty (60) days after the date on which the board shall first promulgate its regulations as authorized by section 4 [50-1204] of this act, no person shall engage in mining in the state without first obtaining an operating permit from the board to do so. A separate operating permit shall be required for each mine complex. Any person, prior to receiving an operating permit from the board, must pay the basic permit fee of twenty-five dollars (\$25) and must submit an application on a form provided by the board, which shall contain the following information and any other pertinent required data by the rules and regulations:

(a) Name and address of the operator and, if a corporation or other business entity, the name and address of its principal officers, partners and the like and its resident agent for service of process, if required by law;

(b) Minerals expected to be mined;

(c) A proposed reclamation plan;

(d) Expected starting date of mining;

(e) A map showing the specific area to be mined and the boundaries of the land which will be disturbed; topographic detail; the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area; location of proposed access roads to be built and the names and addresses of the surface and mineral owners of all lands within the mining area, to the extent known to applicant;

(f) Types of access roads to be built and manner of reclamation of road sites on abandonment;

(g) A plan of mining which will provide, within limits of normal operating procedures of the industry, for completion of mining and associated land disturbances.

(h) A reclamation and revegetation bond in form and amount to be determined by the department in accordance with section 50-1211.

History: En. Sec. 8, Ch. 252, L. 1971; amd. Sec. 4, Ch. 281, L. 1974.

#### Amendments

The 1974 amendment added subdivision (1)(h).

**50-1209. Reclamation plan—accomplishment of specific activities.** (a) The reclamation plan shall provide that reclamation activities, particularly

those relating to control of erosion, shall, to the extent feasible, be conducted simultaneously with mining and in any case shall be initiated promptly after completion or abandonment of mining on those portions of the mine complex that will not be subject to further disturbance by the mining operation. In the absence of an order by the board providing a longer period, the plan shall provide that reclamation activities shall be completed not more than two (2) years after completion or abandonment of mining on said portion of mine complex.

(b) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without having previously obtained from the department written approval of his proposed change.

(c) Provision shall be made to avoid accumulation of stagnant water in the mined area which may serve as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

(d) All final grading shall be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the board for a supervised sanitary fill.

(e) Where mining has left an open pit exceeding two (2) acres of surface area, and composition of the floor and/or walls of which pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions (hereinafter "objectionable effluents") on exposure to moisture, the reclamation plan must include provisions which adequately provide for:

(1) Insulation of all faces from moisture of water contact by covering to a depth of two (2) feet or more with material or fill not susceptible itself to generation of such objectionable effluents; or

(2) Processing of any such objectionable effluents in the pit before their being allowed to flow or be pumped out of it to reduce toxic or other objectionable ratios to a level deemed safe to humans and the environment by the board; or

(3) Drainage of any such objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels deemed safe by the board before release from the settling basin; or

(4) Absorption and/or evaporation of objectionable effluents in the open pit itself; and

(5) Prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and such other devices as may reasonably be required by the board.

(f) Vegetative cover will be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan.

(g) The reclamation plan shall provide for the reclamation of all disturbed land. Proposed reclamation need not reclaim the areas to a better condition or different use than that which existed prior to development or mining.

(h) A reclamation plan will be approved by the board if it adequately provides for the accomplishment of the activities heretofore specified.

**History:** En. Sec. 9, Ch. 252, L. 1971; amd. Sec. 5, Ch. 281, L. 1974.

**Amendments**

The 1974 amendment substituted "de-

partment" for "supervisor or director" in subsection (b); inserted "To the extent practical" at the beginning of subsection (g); and made a minor change in punctuation.

**50-1210. Inspection of mining site—issuance of operating permit—modification of reclamation plan—succession to interest in uncompleted mining operation.** Upon receipt of an application for an operating permit the mining site shall be inspected by the department. Within sixty (60) days of receipt of the complete application and reclamation plan by the board and receipt of the permit fee, the board shall either issue an operating permit to the applicant or return any incomplete or inadequate application to the applicant along with a description of the deficiencies. Failure of the board to so act within that period shall constitute approval of the application and the permit shall be issued promptly thereafter.

The operating permit shall be granted for the period required to mine the land covered by the plan and shall be valid until the surface or underground mining authorized by the permit is completed or abandoned, unless the permit is suspended or revoked by the board as provided in this act. The operating permit shall provide that the reclamation plan may be modified by the board, upon proper application of the permittee, or department, after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) To modify the requirements so they will not conflict with existing laws;

(b) The previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) When significant environmental problem situations are revealed by field inspection.

When one (1) operator succeeds to the interest of another in any uncompleted mining operation by sale, assignment, lease, or otherwise, the board may release the first operator from the duties imposed upon him by this act as to such operation; provided, that both operators have complied with the requirements of this act and the successor operator assumes the duty of the former operator to complete the reclamation of the land, in which case the board shall transfer the permit to the successor operator upon approval of the successor operator's bond as required under this act.

**History:** En. Sec. 10, Ch. 252, L. 1971; amd. Sec. 6, Ch. 281, L. 1974.

**Amendments**

The 1974 amendment substituted "the department" for "a supervisor" in the first sentence; increased the processing period from 35 to 60 days in the second sentence; inserted "complete" before "application" near the beginning of the second sentence; inserted "or revoked" after

"suspended" in the first sentence of the second paragraph; inserted "or, department" after "application of the permittee" in the second sentence of the second paragraph; and rewrote item (c) in the second paragraph which read "The operator and the supervisor mutually agreed, in the field, to temporarily modify the reclamation plan, pending final approval by the board."



**50-1211. Performance bond.** The applicant shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the department of not less than two hundred dollars (\$200) nor more than twenty-five hundred dollars (\$2,500) for each acre or fraction thereof of the disturbed area, conditioned upon the faithful performance of the requirements of this act and the rules of the board. In lieu of such bond the applicant may file with the board a cash deposit, an assignment of a certificate of deposit, or other surety acceptable to the board. Regardless of the above limits, the bond shall not be less than the estimated cost to the state to complete the reclamation of the disturbed land. A public or governmental agency shall not be required to post a bond under the provisions of this act. A blanket performance bond covering two (2) or more operations may be accepted by the board. Such blanket bond shall adequately secure the estimated total number of acres of disturbed land. When determined by the department that the set bonding level of a permit or license does not represent the present costs of reclamation, the department may modify the bonding requirements of that permit or license.

No bond filed in accordance with the provisions of this act shall be released by the department until the provisions of this act, the rules adopted pursuant thereto and this reclamation plan have been fulfilled.

**History:** En. Sec. 11, Ch. 252, L. 1971; amd. Sec. 7, Ch. 281, L. 1974.

#### **Amendments**

The 1974 amendment rewrote this section which read "Concurrently with issue of a permit, the board may provide the permittee with a list of corporate sureties acceptable to the board from whom the performance bond hereafter required can be obtained.

"Upon receipt of a permit the permittee, other than a public or governmental agency, shall not commence operation until the permittee has deposited with the board an acceptable performance bond on forms prescribed and furnished by the board. This performance bond shall be a corporate surety bond executed in favor of the board by a corporation authorized to do a surety business in the state of Montana and approved by the board. The bond shall be filed and maintained in an amount equal to the estimated cost of completing the reclamation plan for the area to be developed or mined during the next twelve (12) month period and any previously developed or mined area for which a permit has been issued and on which the reclamation has not been satisfactorily completed and approved. The board shall have the authority to determine the amount of the bond that shall be required, and may refuse any bond not deemed adequate. In no case shall the amount of the bond be more than five hundred dollars (\$500) per acre of the area above described or fraction thereof.

"The bond shall be conditioned upon the faithful performance of the requirements set forth in this chapter and of the rules and regulations adopted pursuant thereto.

"In lieu of the surety bond required by this section, the permittee may file with the board a cash deposit, negotiable securities acceptable to the board, or an assignment of a savings account in a Montana bank on an assignment form prescribed by the board.

"Liability under the bond shall be maintained as long as reclamation is not completed in compliance with the approved reclamation plan unless released prior thereto as hereinafter provided. Liability under the bond may be released only upon written notification from the board. Notification shall be given upon completion of compliance or acceptance by the board of a substitute bond. In no event shall the liability of the permittee or surety exceed the amount of the surety bond required by this section.

"A public or governmental agency shall not be required to post a bond under the terms of this chapter.

"A blanket performance bond covering two (2) or more operations may be accepted by the board in lieu of separate bonds for each separate operation.

"If adequate proof exists that a bond is unobtainable for any reason other than lack of fiscal responsibility on the operator's part from any source, the licensee's obligation to supply such bond shall be suspended until such time as a source for bonding is obtained.

"Notwithstanding the foregoing, an applicant for a permit who shall, as part of his application, submit his duly acknowledged certificate that he will not, in the course of his entire operations in the state of Montana, exceed five (5) acres in aggregate of disturbed land unreclaimed, shall not be required to show financial capability to procure a performance bond as required by this section or thereafter to procure a corporate surety bond or make any in lieu deposit with the

board therefor. Relief from such surety requirements shall in no wise relieve the permittee from any direct reclamation obligations hereunder. On acceptable showing of hardship on the part of an applicant, the board may relieve any permittee within the classification first described in this paragraph from such technical showings under sections 3 [50-1203] (11) and 8 [50-1208] which the board considers may be waived without injury to the interest of the public."

**50-1212. Annual report of activities by permittee—annual fee.** Within thirty (30) days after completion or abandonment of operations on an area under permit or within thirty (30) days after each anniversary date of the permit, whichever is earlier, or at such later date as may be provided by rules and regulations of the board and each year thereafter until reclamation is completed and approved, the permittee shall pay the annual fee of twenty-five dollars (\$25) and shall file a report of activities completed during the preceding year on a form prescribed by the board, which report shall:

- (a) Identify the permittee and the permit number;
- (b) Locate the operation by subdivision, section, township and range, and with relation to the nearest town or other well-known geographic feature;
- (c) Estimate acreage to be newly disturbed by operation in the next twelve (12) month period; and
- (d) Update any maps previously submitted or specifically requested by the board. Such maps shall show:
  - (1) The permit area;
  - (2) The unit of disturbed land;
  - (3) The area to be disturbed during the next twelve (12) month period;
  - (4) If completed, the date of completion of operations;
  - (5) If not completed, the additional area estimated to be further disturbed by the operation within the following permit year; and
  - (6) The date of beginning, amount and current status of reclamation performed during the previous twelve (12) months.

History: En. Sec. 12, Ch. 252, L. 1971.

**50-1213. Inspection to determine compliance with reclamation plan—rectification of deficiencies—board actions to reclaim disturbed lands.** Following receipt of the permittee's report, and at any other reasonable time the board may elect, the board shall cause the permit area to be inspected to determine if the permittee has complied with the reclamation plan and the board's rules and regulations.

The permittee shall proceed with reclamation as scheduled in his approved reclamation plan. Following written notice by the board noting deficiencies, the permittee shall commence action within thirty (30) days

to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected; provided, that deficiencies that also violate other laws that require earlier rectification shall be corrected in accordance with the applicable time provisions of such laws. The board may extend performance periods referred to in this section and in section 9 [50-1209] of this act, for delays clearly beyond the permittee's control, but only when the permittee is, in the opinion of the board, making every reasonable effort to comply.

Within thirty (30) days after notification by the permittee and when in the judgment of the board reclamation of a unit of disturbed land area is properly completed, the permittee shall be notified in writing and his bond on said area shall be released or decreased proportionately to the acreage included within the bond coverage.

If reclamation of disturbed land is not pursued in accordance with the reclamation plan and the permittee has not commenced action to rectify deficiencies within thirty (30) days after notification by the board, or if reclamation is not properly completed in conformance with the reclamation plan within two (2) years after completion or abandonment of operation on any fraction of the permit area, or such longer period as may have been authorized hereunder, or if, after default by the permittee, the surety either refuses or fails to perform the work to the satisfaction of the board within the time required therefor, the board may, with the staff, equipment and material under its control, or by contract with others, take such actions as are necessary for required reclamation of the disturbed lands. Such work shall be let on the basis of competitive bidding. The board shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized.

The board shall notify the permittee and his surety by order. The order shall state the amount of necessary expenses incurred by the board in reclaiming the disturbed land and a notice that the amount is due and payable to the board by the permittee and the surety. If the amount specified in the order is not paid within thirty (30) days after receipt of the notice, the attorney general, upon request of the board, shall bring an action on behalf of the state in district court. The surety shall be liable to the state to the extent of the bond; the permittee shall be liable for the remainder of the cost.

In addition to the other liabilities imposed by this act, failure to commence action to remedy specific deficiencies in reclamation within thirty (30) days after notification by the board or failure to satisfactorily complete reclamation work on any segment of the permit area within two (2) years, or such longer period as the board may permit on permittee's application therefor, or on the board's own motion, after completion or abandonment of operations on any segment of the permit area shall constitute sufficient grounds for cancellation of a permit or license and refusal to issue another permit or license to the applicant; provided, however, that such action shall not be effected while an appeal is pending from any ruling requiring the same.



History: En. Sec. 13, Ch. 252, L. 1971; amd. Sec. 8, Ch. 281, L. 1974.

mittee shall be liable for the remainder of the cost" to the end of the fifth paragraph.

#### Amendments

The 1974 amendment added "the per-

**50-1214. Reasons for denial of permit.** A permit may be denied for any of the following reasons:

(a) The plan of development, mining, or reclamation conflicts with the state water and air purification standards;

(b) The reclamation plan does not provide an acceptable method for accomplishment of reclamation as required by this act.

A denial of a permit shall be in writing and state the reasons therefor.

History: En. Sec. 14, Ch. 252, L. 1971.

**50-1215. Resubmission with new reclamation plan.** A permit may be denied and returned to the applicant with a request that the application be resubmitted with a different plan for reclamation. The person making application for a permit may then resubmit to the board a new plan for reclamation.

History: En. Sec. 15, Ch. 252, L. 1971.

**50-1216. Administrative remedies.** All hearings and appeal procedures shall be in accordance with the Administrative Procedure Act.

History: En. Sec. 16, Ch. 252, L. 1971; amd. Sec. 9, Ch. 281, L. 1974.

#### Amendments

The 1974 amendment rewrote this section which read "A licensee, permittee or applicant who has been aggrieved by any decision of the board shall have the right of appeal to an appeals board comprised of the following: one (1) member of the fish and game department; two (2) qualified mining engineers to be appointed by the governor, at least one (1) of whom shall not be an employee of the state or any agency or arm thereof; one (1) member from the state department of agriculture; one (1) member of the department of health; and one (1) member

from the state department of planning and economic development; and one (1) member from the legal staff of the attorney general.

"The appeal shall be instituted by filing a petition with the appeals board within thirty (30) days after the denial of the permit. The petition shall contain a statement of the reasons for which the petitioner is aggrieved, and after reasonable notice the petitioner or his attorney or agent shall be afforded a hearing before the appeals board thereon.

"Within fifteen (15) days after the hearing, the appeals board shall notify the petitioner in writing of its decision and the reasons therefor."

#### 50-1217, 50-1218. Repealed.

##### Repeal

Sections 50-1217 and 50-1218 (Secs. 17, 18, Ch. 252, L. 1971), relating to judicial

review of decisions of the appeals board, were repealed by Sec. 14, Ch. 281, Laws of 1974.

**50-1219. Exemption of works performed prior to promulgation of rules and regulations.** No provision of this act shall be applicable to any exploration or mining work performed prior to the date of promulgation of the director's rules and regulations pursuant to section 4 [50-1204] of this act.

History: En. Sec. 19, Ch. 252, L. 1971.

**50-1220. Exemption of small miners—written agreement—noncompliance a misdemeanor.** No provisions of this act shall apply to any small miner when the small miner annually agrees in writing, (1) That he shall not pollute or contaminate any stream; and

(2) That he shall provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals; and

(3) He shall not conduct a mining operation which will result in more than five (5) acres of the earth's surface being disturbed and unreclaimed, and provides a map locating his mining operations. Such map shall be to a size and scale as determined by the department.

Failure to comply with the regulations stipulated in this section will constitute a misdemeanor, and this offense will subject the owners, and/or operators of said project to a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100), payable to the department of revenue of the state of Montana, or any board, commission, or person authorized to collect said fine.

History: En. Sec. 20, Ch. 252, L. 1971; amd. Sec. 15, Ch. 391, L. 1973; amd. Sec. 10, Ch. 281, L. 1974.

partment of revenue" for "board of equalization" in the final paragraph.

The 1974 amendment inserted "annually" before "agrees in writing" in the first sentence of the section; and added "and provides \* \* \* by the department" to the end of subdivision (3).

#### **Amendments**

The 1973 amendment substituted "de-

**50-1221. Information obtained from applications confidential—admissible in hearings or proceedings.** Any and all information obtained by the board or by the director or his staff by virtue of applications for licenses or permits is confidential between the board and the applicant. Any information obtained by the board or by the director or his staff by virtue of applications for licenses or permits is, however, properly admissible in any hearing conducted by the director, the board, appeals board or in any judicial proceeding to which the director and the applicant are parties. Failure to comply with the secrecy provisions of this act shall be punishable by a fine of up to ten thousand dollars (\$10,000) or one (1) year in jail.

History: En. Sec. 21, Ch. 252, L. 1971.

**50-1222. Violation penalties.** (1) A person who violates any of the provisions of this act or rules or orders adopted under this act shall pay a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for the violations, and an additional civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each day during which a violation continues, and may be enjoined from continuing such violations as hereinafter provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the department, sue for the recovery of the penalties provided in this section for, and bring an action for a restraining order, temporary or permanent injunction, against an operator or other person violating or threatening to violate an order adopted under this act.

**History:** En. Sec. 22, Ch. 252, L. 1971; amd. Sec. 11, Ch. 281, L. 1974.

#### Amendments

The 1974 amendment rewrote this sec-

tion which made violation of the act a misdemeanor punishable by a fine of up to \$1,000 or imprisonment in the county jail for up to six months or both.

**50-1223. Exemption of operations on federal lands.** This act shall not be applicable to operations on certain federal lands as specified by the board, provided it is first determined by the board that federal law, or regulations issued by the federal agency administering such land, impose controls for reclamation of said lands substantially equal to or greater than those imposed by this act.

**History:** En. Sec. 23, Ch. 252, L. 1971.

**50-1224. Exemption of sample collectors.** This act shall not be applicable to any person or persons collecting rock samples as a hobby or when the collection of rocks and minerals is offered for sale in any amount not exceeding one hundred dollars (\$100) per year.

**History:** En. Sec. 24, Ch. 252, L. 1971.

#### Separability Clause

Section 25 of Ch. 252, Laws 1971 read "The provisions of this act are severable, and if any part or provision thereof shall be held void in decision of the court so holding shall not affect or impair any of the remaining parts of the provisions of

this act that are severable from the invalid applications."

#### Effective Date

Section 26 of Ch. 252, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

**50-1225. Notice of noncompliance—suspension of permits.** If any of the requirements of this act or the rules or the reclamation plan have not been complied with within the time limits set by the department or board or by this act, the department shall serve a notice of noncompliance on the licensee or permittee, or where found necessary, the commissioner shall order the suspension of the permit. The notice or order shall be handed to the licensee or permittee in person or served by registered mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance shall specify in what respects the operator has failed to comply with this act, the rules or the reclamation plan. If the licensee or permittee has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set therein the permit may be revoked by order of the board and the performance bond forfeited to the department.

**History:** En. 50-1225 by Sec. 12, Ch. 281, L. 1974.

#### Title of Act

An act for the general revision of the laws relating to hard rock mining by

amending sections 50-1203, 50-1204, 50-1207, 50-1208, 50-1209, 50-1210, 50-1211, 50-1213, 50-1216, 50-1220, 50-1222; and repealing sections 50-1217, 50-1218, R. C. M. 1947.



**50-1226. Prior operating permits exempt—exploration licenses and development permits remain in effect.** The provisions of this act shall not apply to any operating permit issued pursuant to chapter 252 of the Laws of 1971. Exploration licenses and development permits obtained pursuant to chapter 252 of the Laws of 1971 shall remain in effect until the date of renewal, unless revoked or suspended in accordance with that act

**History:** En. 50-1226 by Sec. 13, Ch. 281, L. 1974.

**Repealing Clause**

Section 14 of Ch. 281, Laws 1974 read "Sections 50-1217 and 50-1218, R. C. M. 1947, are repealed."

**CHAPTER 13—NOTICE TO LANDOWNER OF SURFACE OPERATIONS**

**Section 50-1301. Short title.**

50-1302. Prospectors and miners to ascertain ownership of land.

50-1303. Written notice and approval required before commencement of operations.

50-1304. Discovery pits on federal lands exempt.

50-1305. Operations pursuant to prospecting permits or other agreements exempt.

50-1306. Violation a misdemeanor—immunity of landowner.

**50-1301. Short title.** This act may be referred to as "The Landowner Notification Act."

**History:** En. Sec. 1, Ch. 335, L. 1971.

**Title of Act**

An act requiring prospectors, miners, or other persons in this state to advise

the owner of the land surface in advance of any operations which will disturb the surface of such land and obtain authorization to operate thereon.

**50-1302. Prospectors and miners to ascertain ownership of land.** All prospectors for minerals, miners, or other persons contemplating surface disturbance by mechanical equipment other than hand tools on lands within the state of Montana are required to ascertain the ownership and possessory right of any land before performing any such operations causing surface disturbance, such as road or trail building or any other work disturbing the surface on such land.

**History:** En. Sec. 2, Ch. 335, L. 1971.

**50-1303. Written notice and approval required before commencement of operations.** The land or surface of land not owned in fee by such person may not be disturbed in any manner until the owner or manager of the surface of said land, and the owner of a possessory right to said land, is given notice in writing, accompanied by a map showing the specific locations involved, of such person's intent or desire to enter upon such land which will sufficiently disclose the plan of work and operations, including contemplated measures for the protection and restoration of the land and waters, to enable the owner or manager of the land and any person holding a possessory right to such land to evaluate the extent of disturbance contemplated and the effectiveness and sufficiency of the protection and restoration measures planned.

(a) Before commencement of any work or operations on any such lands, such person must first obtain from the surface owner of private land specific written approval of the proposed work or operations.

(b) In the case of city, county, state, or federally owned lands, such person must first obtain the authorization or permit, if any, required by the applicable law and the regulations of the governmental agency or board charged by law with the administration or management of the surface of such land.

History: En. Sec. 3, Ch. 335, L. 1971.

**50-1304. Discovery pits on federal lands exempt.** Discovery pits which may be required to locate a mining claim on federal lands open to mineral entry, when excavated entirely by hand methods with hand tools, are exempt from the operation of this act.

History: En. Sec. 4, Ch. 335, L. 1971.

**50-1305. Operations pursuant to prospecting permits or other agreements exempt.** The provisions of this act shall not apply where operations upon land are performed in accordance with the terms of a prospecting permit or a lease covering any mineral interest in said land or other valid agreements authorizing such operations which are in full force and effect.

History: En. Sec. 5, Ch. 335, L. 1971; the owner of one hundred per cent (100%) of the rights to any mineral interest upon the land in which such mineral ownership is vested" from the end of the section.

#### Amendments

The 1973 amendment deleted "or by

**50-1306. Violation a misdemeanor—immunity of landowner.** Any work done in violation of this act is punishable as a misdemeanor and each day of violation shall constitute a separate offense. The owner or lessor shall not be liable for injury to any person on either owned or leased land.

History: En. Sec. 6, Ch. 335, L. 1971.

## CHAPTER 14—STRIP MINED COAL CONSERVATION

- |         |          |   |
|---------|----------|---|
| Section | 50-1401. | Short title.  |
|         | 50-1402. | Policy and purposes of act.   |
|         | 50-1403. | Definitions.  |
|         | 50-1404. | Approved plan required for strip mining — period for which effective.                                       |
|         | 50-1405. | Review of strip mining plan by department—failure to review—procedures—modification of plan.                |
|         | 50-1406. | Appeal on disapproval of plan—hearing—rules to prevent waste of coal.                                       |
|         | 50-1407. | Civil penalty for operation without approved plan—noncompliance with plan—violation of rule as misdemeanor. |
|         | 50-1408. | Procedure for hearings and appeals.   |
|         | 50-1409. | Deposition of fines.  |

**50-1401. Short title.** This act shall be known and may be cited as "The Strip Mined Coal Conservation Act."

History: En. Sec. 1, Ch. 220, L. 1973.

**Title of Act**

An act providing for the conservation of strippable and marketable coal, and prohibiting the waste thereof; providing

for the submission of strip mining plans, to the department of state lands; assigning duties to the state board of land commissioners; providing penalties; and providing an effective date.

**50-1402. Policy and purposes of act.** (1) Recognizing the importance of natural resources to the welfare of present and future generations of the people of Montana, it is declared to be the public policy in providing for the orderly development of coal resources through strip mining to assure the wise use and to prevent the waste of coal.

(2) It is the purpose of this act:

(a) to vest in the department the authority to review strip mining plans and either approve or disapprove such plans for the purpose of preventing waste; and

(b) to vest in the board the authority to adopt rules to prohibit waste resulting from strip mining operations.

History: En. Sec. 2, Ch. 220, L. 1973.

**50-1403. Definitions.** Unless the context requires otherwise, in this act:

(1) "Board" means the state board of land commissioners.

(2) "Department" means the department of state lands.

(3) "Strip mining" means all or any part of the process followed in the production of coal by the open cut method including mining by the auger method or any similar method which penetrates a coal deposit and removes coal directly through a series of openings made by a machine which enters the deposit from a surface excavation, or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the coal.

(4) "Overburden" means all of the earth and other materials which lie above a natural coal deposit and also means such earth and other material after removal from their natural state in the process of strip mining.

(5) "Strippable coal" means that coal which can be removed through strip mining methods adaptable to the location that coal is being strip mined or is planned to be strip mined.

(6) "Marketable coal" means strippable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

(7) "Waste" means the nonremoval or nonutilization of strippable and marketable coal by an operation, provided that the nonremoval or nonutilization of strippable and marketable coal in accordance with reclamation standards established by the department shall not be considered waste.

(8) "Person" means a person, partnership, corporation, association or other legal entity.

(9) "Operation" means any person engaged in strip mining who removes more than ten thousand (10,000) cubic yards of coal or overburden.



(10) "Operator" means a person that conducts an operation.

(11) "Strip mining plan" means the planned course of conduct of a strip mining operation to include plans for the removal and utilization of strippable and marketable coal located within the area planned to be mined.

History: En. Sec. 3, Ch. 220, L. 1973.

**50-1404. Approved plan required for strip mining—period for which effective.** (1) No operator may engage in strip mining without having first obtained approval of a strip mining plan from the department as provided for in section 5 [50-1405].

(2) Approved strip mining plans shall be effective for two (2) years from the date of commencing the operation or one (1) year from the date the plan is approved, whichever occurs first.

History: En. Sec. 4, Ch. 220, L. 1973. 8, 1974. See Effective Date note following sec. 50-1409.

**Effective Date**

This section became effective March

**50-1405. Review of strip mining plan by department—failure to review—procedures—modification of plan.** (1) Upon submission of a strip mining plan to the department, the department shall review the plan for the purpose of determining whether waste will occur. The department may require an operator to submit any information it deems necessary for review of the strip mining plan to determine whether waste will occur and may make inspections and investigations it deems necessary for the review. The department shall either approve or disapprove a strip mining plan within six (6) months of its receipt from the operator. In the event a strip mining plan is disapproved, the department shall recommend the means to bring the plan into conformance with this act. Any strip mining plan not approved or disapproved by the department within six (6) months of its receipt will be deemed approved for the purposes of this act.

(2) The department shall adopt procedures for the submission of strip mining plans and prescribe the format for the preparation of strip mining plans.

(3) Upon request by the operator for good cause shown, the department may modify the terms and conditions of an approved strip mining plan at any time during the course of an operation.

History: En. Sec. 5, Ch. 220, L. 1973.

**50-1406. Appeal on disapproval of plan—hearing—rules to prevent waste of coal.** (1) If a strip mining plan is disapproved, the operator or his authorized representative may appeal to the board. Within thirty (30) days of receiving a request for a hearing, the board must hold a hearing. For good cause shown, the hearing may be held not more than sixty (60) days after receipt by the board of the request. The decision of the department with regard to the strip mining plan shall remain in effect not more than five (5) working days after the hearing unless the decision is sooner affirmed, modified or revoked by the board. The board may re-

quire an operator to submit any information it deems necessary for the hearing and may make inspections and investigations it deems necessary for the hearing.

(2) The board may adopt rules to prevent the waste of coal resulting from strip mining operations and to otherwise effectuate the purposes and intent of this act.

History: En. Sec. 6, Ch. 220, L. 1973.

**50-1407. Civil penalty for operation without approved plan—noncompliance with plan—violation of rule as misdemeanor.** (1) Any operator who engages in an operation without an approved strip mining plan as provided for in this act shall be liable to a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), and an additional civil penalty of not less than one hundred dollars (\$100) nor more than one thousand (\$1,000) for each day during which the violation continues. Such penalties shall be recoverable in an action brought in the name of the state by the attorney general in the district of the first judicial district of the state in and for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.

(2) Any operator that fails to comply with the terms of an approved strip mining plan shall be liable to a civil penalty of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000). Upon conviction the court may revoke the strip mining plan. In the event of revocation of the strip mining plan, the operator must proceed as provided for in section 5 [50-1405]. The penalties provided for in subsection (1) of this section shall apply to revoked strip mining plans.

(3) Any person or operator who violates a rule adopted by the board pursuant to this act is guilty of a misdemeanor.

History: En. Sec. 7, Ch. 220, L. 1973.

**50-1408. Procedure for hearings and appeals.** All hearings and appeal procedures shall be in accordance with sections 82-4209 through 82-4217.

History: En. Sec. 8, Ch. 220, L. 1973.

#### Separability Clause

Section 9 of Ch. 220, Laws 1973 read "If a part of this act is invalid, all valid parts that are severable from the invalid

part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

**50-1409. Deposition of fines.** All fines collected under the provisions of this act shall be deposited in the general fund.

History: En. Sec. 10, Ch. 220, L. 1973.

#### Effective Date

Section 11 of Ch. 220, Laws 1973 read "This act is effective on its passage and approval except that for operations in

effect upon the date of the passage and approval of this act, the provisions of section 4 shall not apply to such operations for one (1) year from the effective date of this act."

## CHAPTER 15—OPEN CUT MINING

- Section 50-1501. Short title.  
 50-1502. Policy of state.  
 50-1503. Contracts for reclamation of open cut mining land—enforcement of contracts.  
 50-1504. Definitions.  
 50-1505. Administration of act—delegation of functions.  
 50-1506. Powers, duties and functions of commission.  
 50-1507. Contract for reclamation required for large open cut operations.  
 50-1508. Application for contract—contents—issuance of contract—amendment—withdrawal of land.  
 50-1509. Terms of bond required—deposit in lieu of bond—substitution of bond—forfeiture—release.  
 50-1510. Contract requirements—performance bond—effective period of contract.  
 50-1511. Receipt of funds by commission—reclamation work by commission.  
 50-1512. Inspection of open cut mining by commission.  
 50-1513. Operation without contract as misdemeanor—penalty.  
 50-1514. Reclamation of land on which bond forfeited.  
 50-1515. Commission hearing on final order of commissioner—judicial review.  
 50-1516. Exemption of operations covered by other law.

**50-1501. Short title.** This act shall be known and may be cited as "The Open Cut Mining Act."

**History:** En. Sec. 1, Ch. 326, L. 1973.

#### Title of Act

An act to provide for reclamation and conservation of land subject to open cut bentonite, sand or gravel mining; requiring reclamation contracts for opera-

tions resulting in removal of ten thousand (10,000) cubic yards of overburden or product; providing enforcement by the state board of land commissioners; repealing sections 50-1018 through 50-1033, R. C. M. 1947; and providing an effective date.

**50-1502. Policy of state.** It is the policy of this state to provide for the reclamation and conservation of land subjected to open cut bentonite, clay, scoria, phosphate rock, sand or gravel mining. Therefore, it is the purpose of this act to preserve natural resources, to aid in the protection of wildlife and aquatic resources, to safeguard and reclaim through effective means and methods all agricultural, recreational, home and industrial sites subjected to or which may be affected by open cut bentonite, clay, scoria, phosphate rock, sand or gravel mining to protect and perpetuate the taxable value of property, to protect scenic, scientific, historic or other unique areas, and to promote the health, safety and general welfare of the people of this state.

**History:** En. Sec. 2, Ch. 326, L. 1973; amd. Sec. 2, Ch. 209, L. 1974; amd. Sec. 2, Ch. 235, L. 1974.

pear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 209 and once by Ch. 235. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not ap-

#### Amendments

Chapter 209, Laws of 1974 inserted the references to "clay."

Chapter 235, Laws of 1974, inserted the references to "scoria" and "phosphate rock."

**50-1503. Contracts for reclamation of open cut mining land—enforcement of contracts.** The state board of land commissioners is hereby authorized to enter into contracts in the name of the state of Montana with



operators which will provide for the reclamation of lands on which open cut mining of bentonite, clay, scoria, phosphate rock, sand and gravel has been or is to be conducted. The state board of land commissioners is authorized to sue and be sued in the name of the state of Montana to enforce the provisions of any contract, and said board shall bring such court actions and take such other steps and actions as may be necessary to enforce the provisions of such contracts.

**History:** En. Sec. 3, Ch. 326, L. 1973; amd. Sec. 3, Ch. 209, L. 1974; amd. Sec. 3, Ch. 235, L. 1974.

pear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 209 and once by Ch. 235. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not ap-

#### Amendments

Chapter 209, Laws of 1974 inserted the reference to "clay" in the first sentence.

Chapter 235, Laws of 1974, inserted the references to "scoria" and "phosphate rock" in the first sentence.

**50-1504. Definitions.** When used in this act, unless a different meaning clearly appears from the context:

(1) "Contract" means a mined land reclamation contract prepared by the commission to meet the requirements of this act.

(2) "Open cut mining" means the mining of bentonite, clay, scoria, phosphate rock, sand or gravel by removing the overburden lying upon natural deposits thereof, and mining directly from the natural deposits thereby exposed, including the removal of overburden for the purpose of determining the location, quality or quantity of any natural deposit of bentonite, clay, scoria, phosphate rock, sand or gravel.

(3) "Reclamation" means the reconditioning of the area of land affected by open cut mining operations to make the area suitable for productive use including but not limited to, forestry, agriculture, grazing, wildlife, recreation, residential and industrial sites.

(4) "Overburden" means all of the earth and other materials which lie above a natural deposit of bentonite, clay, scoria, phosphate rock, sand or gravel. "Spoil" is the overburden disturbed from its natural state in the process of open cut mining.

(5) "Operator" means any person engaged in and controlling an open cut mining operation.

(6) "Affected land" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(7) "Commission" means the state board of land commissioners.

(8) "Person" means any natural person, or any firm, association, partnership, co-operative, corporation or any department, agency or instrumentality of the state or any governmental subdivision, or any other entity whatsoever.

(9) "Landowner" means the owner of land directly or indirectly affected by an open cut mining operation.

(10) "Public notice" means notice given by publication in a newspaper in the general area where the affected land is located. Such notice shall be given once a week for three (3) successive weeks.

(11) "Soils materials" are those horizons containing topsoil or other soils leached free of deleterious salts and capable of sustaining plant growth and recognized as such by standard authorities.

(12) "Refuse" means all waste material directly connected with the open cut mining operations.

(13) "Final cut" means the last pit created in an open cut mined area.

(14) "High wall" means that side of the pit adjacent to unmined land.

(15) "Reclamation plan" means the description of current land use, topographical data, water data, soils data, leased areas, intended mine areas and description of proposed reclamation of the land with appropriate maps.

(16) "Progress report" means a report showing the land which the operator has affected by open cut mining during the year. Such report shall show the number of acres of affected land and all reclamation accomplished.

**History:** En. Sec. 4, Ch. 326, L. 1974; amd. Sec. 4, Ch. 209, L. 1974; amd. Sec. 4, Ch. 235, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 209 and once by Ch. 235. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 209, Laws of 1974, inserted the references to "clay" in subdivisions (2) and (4).

Chapter 235, Laws of 1974, inserted the references to "scoria" and "phosphate rock" in subdivisions (2) and (4).

#### Effective Date

Section 5 of Ch. 209, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 14, 1974.

**50-1505. Administration of act—delegation of functions.** The commission is the administrator of this act and it has all the power necessary to implement and enforce it. The commission may delegate to the commissioner of state lands such powers, duties and functions under this act as it deems necessary for the performance of its duties.

**History:** En. Sec. 5, Ch. 326, L. 1973.

**50-1506. Powers, duties and functions of commission.** The commission has the following powers, duties and functions:

(1) to enter into contracts where it is found on the basis of the information set forth in the application and an evaluation of the operation by the commission that the requirements of the act or rules will be observed and that the operation and the reclamation of the affected area can be carried out consistent with the purpose of the act;

(2) to prepare and adopt rules and regulations pertaining to open cut mining to accomplish the purposes of this act;

(3) to conduct hearings and for the purposes of conducting such hearings, to administer oaths and affirmations, to subpoena witnesses, to compel attendance of witnesses, to hear evidence and to require the production of any books, papers, correspondence, memoranda, agreements, documents or other records relevant or material to the inquiry;

(4) to adopt uniform procedures for the filing of necessary records,

the issuance of contracts, and for any other matters of administration not specifically enumerated in this act;

(5) to reclaim any affected land with respect to which a bond has been forfeited;

(6) to make investigations or inspections which may be deemed necessary to ensure compliance with any provisions of this act.

History: En. Sec. 6, Ch. 326, L. 1973.

**50-1507. Contract for reclamation required for large open cut operations.** From and after the effective date of this act, no operator shall conduct open cut mining operations which shall result in the removal of ten thousand (10,000) cubic yards, or more, of product or overburden, until he has entered into a contract with the commission for the reclamation of the land affected. Any operator conducting a number of operations each of which result in the removal of less than ten thousand (10,000) cubic yards of product or overburden but which result in the removal of ten thousand (10,000) cubic yards, or more, of product or overburden in the aggregate shall be subject to the provisions of this act.

History: En. Sec. 7, Ch. 326, L. 1973.

**50-1508. Application for contract—contents—issuance of contract—amendment—withdrawal of land.** Applications for a contract shall be made upon a form furnished by the commission, which form contains the following:

(1) the name of the operator and, if other than the owner of the land, the name and address of the owner.

(2) the type of operation to be conducted;

(3) the volume of earth to be removed, as accurately as the same may then be estimated, and the volume which has been previously removed, if any;

(4) the location of the operation by legal subdivision, section, township and range, and county;

(5) the date when such operation was or will be commenced;

(6) the operator must submit a plan of his operation and the method and manner of reclamation that will be used or followed. If the operator, prior to applying for a contract, notifies the commission of his intention to submit a plan, and requests the commission to examine the area to be mined, the commission shall cause the area to be examined and make recommendations to the operator regarding reclamation;

(7) a statement that the applicant has the right and power by legal estate owned to mine by open cut mining the lands so described;

(8) the application shall be accompanied by:

(a) a bond or security meeting the requirements as set out in this act, and

(b) a fee of fifty dollars (\$50);

Upon receipt of such application, bond or security and fee due from the operator, and upon agreement to the terms of the contract by the



parties, the commission may issue a contract to the applicant which shall entitle him thereafter to continue in or engage in open cut mining on land therein described;

(9) an operator desiring to have his contract amended to cover additional contiguous or nearby land may file an amended application with the commission. Upon receipt of the amended application, and such additional bond as may be required, and upon agreement to the terms of the amendment by the parties, the commission may issue an amendment to the original contract covering the additional land described in the amended application, without the payment of any additional fee;

(10) an operator may withdraw any land covered by contract, except affected land, by notifying the commission thereof, in which case the penalty of the bond or security filed by such operator pursuant to the provisions of this act shall be reduced proportionately.

History: En. Sec. 8, Ch. 326, L. 1973.

**50-1509. Terms of bond required—deposit in lieu of bond—substitution of bond—forfeiture—release.** (1) Any bond required to be filed in this act by the operator shall be in such form as the commission prescribes, payable to the state of Montana, and conditioned upon the operator's full compliance with all requirements of this act and all rules and regulations of the commission. Such bond shall be signed by the landowner or operator, as appropriate, as principal, and by a good and sufficient corporate surety, licensed to do business in the state of Montana, as surety. The penalty of such bond shall be in an amount not to exceed the costs of restoration required by this act as determined by the commission, but shall not be less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000) per acre.

(2) In lieu of such bond, the operator may deposit cash and government securities or a bond with property sureties with the commission in an amount equal to that of the required bond on conditions as above prescribed. In the discretion of the commission, surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities thereon as security, in which event no surety shall be required. The penalty of the bond or amount of cash and securities shall be increased or reduced from time to time as provided in this act. Such bond or security shall be and remain in effect until the mined acreages have been reclaimed, as provided under the contract, and approved and released by the commission, and shall from time to time cover only actual mined acreages and may be increased or reduced to cover only such acreages as remained unreclaimed.

(3) If the license to do business in the state of any surety upon a bond filed with the commission pursuant to this act shall be suspended or revoked, the operator, within thirty (30) days after receiving notice thereof from the commission, shall substitute for such surety a good and sufficient surety licensed to do business in the state. Upon failure of the operator to make substitution of surety, the commission shall have the right to suspend the contract of the operator to conduct operations upon the land described in such contract until such substitution has been made.

(4) The commission shall cause to be reclaimed any affected land with respect to which a bond has been forfeited.

(5) Whenever an operator shall have completed all of the requirements under the provisions of this act as to any affected land, he shall notify the commission thereof. If the commission shall release the operator from further obligation regarding such affected land, the penalty of the bond shall be reduced proportionately.

History: En. Sec. 9, Ch. 326, L. 1973.

**50-1510. Contract requirements—performance bond—effective period of contract.** The contract shall meet the following requirements:

(1) The operator shall submit a reclamation plan to the commission before commencing any open cut mining, and may not commence mining before it receives approval from the commission. The operator may request and receive a meeting with the commission prior to submission of the plan. If the commission does not notify the operator that it has approved or disapproved a plan within thirty (30) days after the commission has received the plan, the commission shall be deemed to have approved the plan. The commission, however, may for sufficient cause extend its period of consideration for an additional thirty (30) days if it notifies the operator prior to the end of the original thirty (30) day period. The commission shall submit all reclamation plans or amendments to the reclamation plan to the landowner for his recommendations and shall consider those recommendations in deciding whether to approve or disapprove any plan or amendments. The commission may seek technical help from any state or federal agency. The commission must submit the plan immediately to the director, university of Montana state-wide archaeological survey for evaluation of possible archaeological or historical values in the area to be mined. The commission may approve a reclamation plan only if the commission has found that the plan provides for the best possible reclamation procedures available under the circumstances at the time, so that after mining operations are completed the affected land shall be reclaimed to a productive use. Once the reclamation plan has been accepted in writing by the commission, it shall become a part of the contract but shall be subject to annual review and modification by the commission.

(2) The commission may not approve any reclamation plan unless the plan provides that:

(a) the land will be reclaimed for one or more specified uses, including but not limited to: forest, pasture, orchard, cropland, residence, recreation, industry, habitat (including food, cover or water) for wildlife or other uses;

(b) to the extent reasonable and practicable, the operator shall establish vegetative cover commensurate with the proposed land use;

(c) where operations result in a need to prevent acid drainage or sedimentation, on or in adjoining lands or streams, there shall be provisions for the construction of earth dams or other reasonable devices to control water drainage, provided the formation of such impoundments or devices will not interfere with other landowners' rights or contribute to water pollution;

(d) to accomplish practical utilization of soil materials, such material will be utilized for placement on affected areas if required by the reclamation plan after completion or termination of that particular phase of the mining operations at a depth sufficient for plant growth on slopes of 3:1 or less. Grading specifications shall be commensurate with the topography sought and land use designated;

(e) metal and other waste shall be removed or buried;

(f) all access, haul and other support roads shall be located, constructed and maintained in such a manner as to control and minimize channeling and other erosion;

(g) the operator shall submit annually to the commission a progress report;

(h) all operations shall be conducted so as to avoid range and forest fires and spontaneous combustion. Open burning of carbonaceous materials shall be in accordance with suitable practices for fire prevention and control;

(i) archaeological and historical values in areas to be mined shall be given appropriate protection;

(j) except for rock faces, bench faces and excavations used for water impoundments, each surface area of the mined premises which will be disturbed shall be revegetated when its use for extractive purposes is no longer required. Seeding and planting shall be done in a manner to achieve a permanent suitable vegetative cover for wildlife, livestock and retardation of erosion. All seed will be drilled unless otherwise provided in the plan;

(k) reclamation shall be as concurrent with mining operations as feasible, and must be completed within a specified length of time.

(3) If reclamation according to the plan has not been completed in the time specified, the commission shall after thirty (30) days' written notice order the operator to cease mining, and, if the operator does not cease, shall institute an action to enjoin further operation and may sue for damages for breach of contract, for payment of the performance bond, or for both.

(4) (a) At any time during the period of reclamation the operator may for good reason submit to the commission a new reclamation plan or amendment to the existing plan including extensions of time.

(b) The commission may approve the proposed new reclamation plan, or amendments to the existing plan if:

(i) the operator has in good faith carried on reclamation according to the existing plan, and

(ii) the proposed new plan, or amendments to the existing plan, will result in reclamation as desirable or more so than the reclamation proposed under the existing plan, or

(iii) it is highly improbable reclamation will be successful unless the existing plan is replaced or amended.

When accepted, the proposed new reclamation plan or the proposed amendments to the existing plan becomes a part of the contract.



(5) The operator shall provide a performance bond, or an alternative acceptable to the commission, in an amount commensurate with the estimated cost of reclamation, but in no case shall the bond be less than two hundred dollars (\$200) per acre. The estimated cost of reclamation shall be set forth in the reclamation plan.

(6) The contract, reclamation plan and amendments accepted by the commission shall be a public record and open to inspection.

(7) The contract shall become effective when signed by the commission and the operator, and shall remain in force until terminated by mutual consent or by the commission upon six (6) months' notice.

History: En. Sec. 10, Ch. 326, L. 1973.

**50-1511. Receipt of funds by commission—reclamation work by commission.** The commission may receive any federal funds, state funds or any other funds for the reclamation of land affected by open cut mining. The commission may cause the reclamation work to be done by its own employees or by employees of other governmental agencies, soil conservation districts or through contracts with qualified persons.

Any funds or any public works programs available to the commission shall be used and expended to reclaim and rehabilitate any lands that have been subject to open cut mining that have not been reclaimed and rehabilitated in accordance with the standards of this act.

History: En. Sec. 11, Ch. 326, L. 1973.

**50-1512. Inspection of open cut mining by commission.** The commission, or its accredited representatives, may enter upon lands subjected to open cut mining at all reasonable times for the purpose of inspection, to determine whether the provisions of this act have been complied with.

History: En. Sec. 12, Ch. 326, L. 1973.

**50-1513. Operation without contract as misdemeanor—penalty.** Anyone required by this act to have a contract and who engages in open cut mining without previously securing a contract to do so as prescribed by this act is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000). Each day of operation without a contract required by this act shall be deemed a separate violation.

History: En. Sec. 13, Ch. 326, L. 1973.

**50-1514. Reclamation of land on which bond forfeited.** The commission shall have the power to reclaim, in keeping with the provisions of this act, any affected lands with respect to which a bond has been forfeited.

History: En. Sec. 14, Ch. 326, L. 1973.

**50-1515. Commission hearing on final order of commissioner—judicial review.** (1) A person who is aggrieved by a final decision of the commissioner of state lands is entitled to a hearing before the commission.

(2) The Montana Administrative Procedure Act (Title 82, chapter 42, R. C. M. 1947) governs hearings before the commission and judicial review of decisions of the commission under this act.

**History:** En. Sec. 15, Ch. 326, L. 1973.

#### Repealing Clause

Section 17 of Ch. 326, Laws 1973 read "Sections 50-1018 through 50-1033, R. C. M. 1947, are repealed. However, contracts entered into under the provisions of sections 50-1018 through 50-1033, R. C. M. 1947, are not affected hereby, and shall remain in effect until terminated or completed."

#### Separability Clause

Section 16 of Ch. 326, Laws 1973 read "The provisions of this act are severable, and if any part or provision thereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts of provisions of this act that are severable from the invalid applications."

**50-1516. Exemption of operations covered by other law.** Nothing in this act shall be construed to be applicable to mining or exploration operations which are regulated under the provisions of Title 50, chapter 12, R. C. M. 1947.

**History:** En. Sec. 18, Ch. 326, L. 1973.

#### Effective Date

Section 19 of Ch. 326, Laws 1973 pro-

vided the act should be in effect from and after its passage and approval, Approved March 16, 1973.

### CHAPTER 16—STRIP MINE SITING ACT

- Section 50-1601. Short title.  
 50-1602. Policy of state—purposes of act—exercise of general police power.  
 50-1603. Definitions.  
 50-1604. Orders and rules of board—hearings.  
 50-1605. Administration—functions of department.  
 50-1606. Permit required to engage in preparatory work.  
 50-1607. Application for permit—contents—permit authorization—notification—fee—bond.  
 50-1608. Refusal of permit—grounds.  
 50-1609. Notice of noncompliance—suspension of permits—conditions required for reinstatement of permits.  
 50-1610. Receipts paid into special fund—use of fund.  
 50-1611. Violation—civil penalty—injunction—misdemeanor.  
 50-1612. Mandamus to compel enforcement of law.  
 50-1613. Procedure for hearings and appeals.  
 50-1614. Submitted information may be accepted to meet strip mining permit requirements.  
 50-1615. Termination of permit.  
 50-1616. Effect of strip mine siting permit on subsequent strip mining permits.  
 50-1617. Application to preparatory work on contracts prior to January 1, 1974.

**50-1601. Short title.** This act shall be known and may be cited as "The Strip Mine Siting Act."

**History:** En. 50-1601 by Sec. 1, Ch. 280, L. 1974.

#### Title of Act

An act creating the Strip Mine Siting

Act and providing for control of the location of new strip mines and preparatory work; providing for permits, reclamation plans, and penalties.

**50-1602. Policy of state—purposes of act—exercise of general police power.** (1) It is the policy of this state to provide adequate remedies for the protection of the environmental life support system from degrada-

tion and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the purpose of this act:

(a) to vest in the department the authority to review new strip mine site locations and reclamation plans and either approve or disapprove such locations and plans and to exercise general administration and enforcement of this act; and

(b) to vest in the board the authority to adopt rules, to suspend and revoke permits, and to conduct hearings; and

(c) to satisfy the requirement of article IX, section 2 of the constitution of this state, that all lands disturbed by the taking of natural resources be reclaimed; and

(d) to ensure that adequate information is available on areas proposed for strip mining so that mining and reclamation plans may be properly formulated to accommodate areas that are suitable for strip mining.

(3) This act is deemed to be an exercise of the general police power to provide for the health and welfare of the people.

History: En. 50-1602 by Sec. 2, Ch. 280, L. 1974.

**50-1603. Definitions.** When used in this act, unless a different meaning clearly appears from the context:

(1) "Operation" means all of the premises, facilities, railroad loops, roads, power lines, and equipment used in the process of producing and removing mineral from a designated strip mine area.

(2) "Board" means the board of land commissioners as provided for in article X, section 4 of the constitution of this state.

(3) "Department" means the department of state lands provided for in Title 82A, chapter 11.

(4) "New strip mine" means a strip mining operation proposed for an area of land which the department determines, because of distance from an existing strip mine operation or because of important differences in topography, soils, wildlife, geologic structure or vegetation from an existing strip mine operation, does not constitute an expansion of an existing operation.

(5) "Preparatory work" means those on-site disturbances, excluding prospecting, associated with the initiation of a new strip mine, including but not limited to the construction of railroad spurs or loops, buildings to house mining operations, roads, storage and train load-out facilities, transmission lines, erection of draglines and loading shovels and other similar work.

(6) "Strip mining" means any part of the process followed in the production of mineral by the open cut method including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation, or any other method or process in which the strata or overburden is removed or displaced in order to recover the mineral.



(7) "Mineral" means mineral as defined in section 50-1036(1), R. C. M. 1947.

(8) "Person" means a person, partnership, corporation, association or other legal entity, or any political subdivision or agency of the state.

(9) "Operator" means a person who intends to operate a new strip mine involving the removal of more than ten thousand (10,000) cubic yards of mineral or overburden.

History: En. 50-1603 by Sec. 3, Ch. 280, L. 1974.

**50-1604. Orders and rules of board—hearings.** The board:

(1) shall issue after an opportunity for a hearing, orders requiring an operator to adopt the remedial measures necessary to comply with this act and rules adopted under this act;

(2) shall issue after an opportunity for a hearing, a final order directing the department to revoke a permit, when the requirements set forth by the notice of noncompliance, order of suspension, or an order of the board requiring remedial measures have not been complied with according to the terms herein;

(3) shall adopt after an opportunity for a hearing, general rules pertaining to new strip mines and preparatory work to accomplish the purposes of this act;

(4) shall conduct hearings under provisions of this act or rules adopted by the board.

History: En. 50-1604 by Sec. 4, Ch. 280, L. 1974.

**50-1605. Administration—functions of department.** The department:

(1) shall exercise general supervision, administration, and enforcement of this act and all rules and orders adopted under this act;

(2) shall order the suspension of any permit for failure to comply with this act, any rule adopted under this act or permit issued pursuant to this act;

(3) shall order the halting of any operation that is started without first having secured a permit as required by this act;

(4) shall make investigations and inspections necessary to ensure compliance with this act;

(5) shall encourage and conduct investigations, research, experiments and demonstrations, and collect and disseminate information relating to new strip mines and reclamation of lands and waters affected by preparatory work;

(6) shall adopt rules with respect to the filing of reports, the issuance of permits and other matters of procedure and administration.

History: En. 50-1605 by Sec. 5, Ch. 280, L. 1974.

**50-1606. Permit required to engage in preparatory work.** No person may commence preparatory work until the operator shall have first ob-

tained from the department a mine site location permit for a new strip mine, or a permit under chapter 10, Title 50, R. C. M. 1947, if the application for such permit under Title 50 includes an appropriate long-range mining plan acceptable to the department.

History: En. 50-1606 by Sec. 6, Ch. 280, L. 1974.

**50-1607. Application for permit—contents—permit authorization—notification—fee—bond.** (1) A person desiring a mine site location permit shall file with the department an application which shall contain a reclamation plan for any preparatory work and such other information the department deems necessary to determine if the proposed area to be affected by the operation is appropriate for the location of a new strip mine. The department may require any information included in, but not limited to, an application for a strip mining permit as required by chapter 10, Title 50, R. C. M. 1947.

(2) A mine site location permit shall authorize the applicant to engage in preparatory work upon the area described in the application and designated in the permit for a period of one (1) year from the date of issuance and is renewable until the applicant has applied for and received a strip mining permit in accordance with chapter 10, Title 50, R. C. M. 1947.

(3) The department shall notify the applicant within three hundred sixty-five (365) days of receipt of a complete application if the proposed site is an acceptable location for development of a new strip mine. If the site is approved, the department shall issue the applicant a mine site location permit. If the location is not approved, the department shall notify the applicant in writing, setting forth reasons why the location is not acceptable. The department shall also notify the applicant within three hundred sixty-five (365) days of receipt of a complete application whether the proposed reclamation plan is or is not acceptable. If the plan is not acceptable, the department shall set forth the reasons for nonacceptance of the plan. It may propose modifications, delete areas, or reject the entire plan.

(4) A fee of fifty dollars (\$50) shall be paid before the mine site location permit required in this act may be issued. The operator shall also file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the board (on the recommendation of the commissioner) of not less than two hundred dollars (\$200) nor more than ten thousand dollars (\$10,000) for each acre or fraction thereof of the area of land to be disturbed by preparatory work, with a minimum bond of five thousand dollars (\$5,000), conditioned upon the faithful performance of the requirements set forth in this act and of the rules of the board. In determining the amount of the bond within the above limits, the board shall take into consideration the character and nature of the surface disturbances, the future suitable use of the land involved and the cost of removing or burying facilities, backfilling, grading, topsoiling, and reclamation to be required. Notwithstanding the above limits the bond may not be

less than the total estimated cost to the state of completing the work described in the reclamation plan.

History: En. 50-1607 by Sec. 7, Ch. 280, L. 1974.

**50-1608. Refusal of permit—grounds.** (1) The department may not issue a permit under this act if it finds that a new strip mine is not consistent with the purposes and policies of this act.

(2) The department shall not approve a new strip mining site or preparatory work site for any areas of land or water included in the application if the department determines that the area could not be approved under the criteria specified in section 50-1042, R. C. M. 1947.

(3) The department shall not issue a permit under this act if a proposed reclamation plan does not meet the requirements of Title 50, chapter 10, R. C. M. 1947.

History: En. 50-1608 by Sec. 8, Ch. 280, L. 1974.

**50-1609. Notice of noncompliance—suspension of permits—conditions required for reinstatement of permits.** (1) If any of the requirements of this act or rules or orders of the department and the board have not been complied with within the time limits set by the department or the board or by this act, the department shall serve a notice of noncompliance on the operator, or where found necessary, the commissioner shall order the suspension of a permit. The notice or order shall be handed to the operator in person or served by registered mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with this act or the rules or orders of the department and the board. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set therein, the permit may be revoked by order of the board and the performance bond forfeited to the department.

(2) Any additional strip mining or mine site location permits held by an operator whose mine site location permit has been revoked shall be suspended and the operator is not eligible to receive another permit or to have the suspended permits reinstated until he has complied with all the requirements of this act in respect to former permits issued him. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state, or the operator has paid into the reclamation account a sum together with the value of the bond, the board finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this act.

History: En. 50-1609 by Sec. 9, Ch. 280, L. 1974.

**50-1610. Receipts paid into special fund—use of fund.** (1) All fees, forfeit funds, and other moneys available or paid to the department



under the provisions of this act shall be placed in the state treasury and credited to a special agency account to be designated as the strip mining and reclamation fund. This fund shall be available to the department by appropriation and shall be expended for the administration and enforcement of this act and for the reclamation and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purposes of this act until expended or until appropriated by subsequent legislative action.

History: En. 50-1610 by Sec. 10, Ch. 280, L. 1974.

**50-1611. Violation—civil penalty—injunction—misdemeanor.** (1) A person or operator who violates any of the provisions of this act or rules or orders adopted under this act shall pay a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for the violation, and an additional civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each day during which a violation continues, and may be enjoined from continuing such violations as hereinafter provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the commissioner, sue for the recovery of the penalties provided in this section for, and bring an action for a restraining order, temporary or permanent injunction, against an operator or other person violating or threatening to violate an order adopted under this act.

(3) A person who willfully violates any of the provisions of this act, or any determination or order adopted under this act which has become final is guilty of a misdemeanor and shall be fined not less than five hundred dollars (\$500) and not more than five thousand dollars (\$5,000). Each day on which a violation occurs constitutes a separate offense.

History: En. 50-1611 by Sec. 11, Ch. 280, L. 1974.

**50-1612. Mandamus to compel enforcement of law.** (1) A resident of this state, with knowledge that a requirement of this act or a rule adopted under this act, is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement

or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark or in the district court of the county in which the land is located. The court, if it finds that a requirement of this act or a rule adopted under this act, is not being enforced shall order the public officer or employee, whose duty is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

History: En. 50-1612 by Sec. 12, Ch.  
280, L. 1974.

**50-1613. Procedure for hearings and appeals.** All hearing and appeal procedures shall be in accordance with the Montana Administrative Procedure Act.

History: En. 50-1613 by Sec. 13, Ch.  
280, L. 1974.

**50-1614. Submitted information may be accepted to meet strip mining permit requirements.** The department may choose to accept information submitted under this act to the extent it is applicable and relevant as satisfying the requirements of chapter 10, Title 50.

History: En. 50-1614 by Sec. 14, Ch.  
280, L. 1974.

**50-1615. Termination of permit.** A mine site location permit granted by the department in accordance with the provisions of this act shall remain in full force and effect until the provisions of the permit are complied with and the bond is released, except that those areas of land covered by a mine site location permit for which a strip mining permit is granted pursuant to the provisions of chapter 10, Title 50, shall be released from the terms and provisions of the mine site location permit.

History: En. 50-1615 by Sec. 15, Ch.  
280, L. 1974.

**50-1616. Effect of strip mine siting permit on subsequent strip mining permits.** When the department has sufficient information to approve or disapprove a mine site location permit application on either the entire area being considered for a mine site location permit or a portion thereof on the grounds listed in section 50-1042(2) and (4), it shall so state in a written statement to the operator. This decision is binding on the department with regard to strip mining permit applications as specified in chapter 10, Title 50, R. C. M. 1947, unless:

(1) new information is submitted or obtained in compliance with chapter 10, Title 50, which indicates a situation not existing or known at the time of the issuance of a permit under this act;

(2) an application under this act misrepresented information related to the criteria;

(3) a situation develops because of strip mining operations which was not in existence at the time of the issuance of a permit under this act.

History: En. 50-1616 by Sec. 16, Ch. 280, L. 1974.

50-1617. Application to preparatory work on contracts prior to January 1, 1974. The provisions of this act shall not apply where any preparatory work was conducted prior to January 1, 1974, or for which contracts for preparatory work or the sale of Montana coal from a new strip mine by an operator holding a valid permit under section 50-1039 were in existence and proven specific notice thereof given to the department prior to January 1, 1974.

History: En. 50-1617 by Sec. 17, Ch. 280, L. 1974.





## TITLE 51—MONOPOLIES

- Chapter 1. Unfair Practices Act, 51-113.  
3. Montana Cigarette Sales Act, 51-301 to 51-314.  
4. Unfair competition, discrimination and combinations in restraint of trade, 51-405, 51-409.

### CHAPTER 1—UNFAIR PRACTICES ACT

Section 51-113. Montana trade commission—administration of act by—intervention—orders—review—appeals—process—finality of order.

51-113. Montana trade commission—administration of act by—intervention—orders—review—appeals—process—finality of order. (1) The Montana trade commission shall have the administration of this act; and the members thereof shall not receive any additional compensation for their services other than their salaries prescribed by law. The commission shall meet not less than six (6) times a year on or about the fifteenth (15th) day of the month, and as often and wherever it may decide other meetings are necessary. Suitable notice of all meetings shall be given as the commission may determine.

Said commission is empowered and directed to prevent any person, firm or corporation from violating any of the provisions of this chapter.

(2) Upon receiving notice from any person that any person, firm or corporation is violating or has violated any of the provisions of this chapter, the commission shall immediately notify the person giving such notice either to appear at its next regular or special meeting or to make a written reply to show probable cause of such violation. If probable cause is shown, the commission must thereafter make its own investigation and within sixty (60) days of the finding of probable cause must make a written report of its investigation and must mail a copy of its findings to the person initially giving notice of a violation.

If, after such investigation the commission shall have reason to believe that any such person, firm or corporation has been or is engaging in any course of conduct or doing any act or acts in violation of the provisions of this chapter and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, firm or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed not less than five (5) days after the service of said complaint. Any such complaint may be amended by the commission in its discretion at any time five (5) days prior to the issuance of an order based thereon. The person, firm or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, firm or corporation to cease and desist from the violation of the law so charged in said complaint. Any person,

firm or corporation may make application, and upon good cause shown may be allowed by the commission to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the act or conduct in question is prohibited by this chapter, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, firm or corporation an order requiring such person, firm or corporation to cease and desist from such acts or conduct. Until a transcript of the record in such hearing shall have been filed in a district court, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

(3) to (10). \* \* \* [Same as parent volume.]

**History:** En. Sec. 12, Ch. 80, L. 1937; amd. Sec. 1, Ch. 50, L. 1939; amd. Sec. 1, Ch. 142, L. 1967.

#### Amendments

The 1967 amendment inserted the second sentence in the first paragraph of subsection (1); inserted the first paragraph in subsection (2); substituted "If, after such

investigation" for "Whenever" at the beginning of the second paragraph in subsection (2); and inserted arabic numbers after the written numbers in subsections (2), (4), (7) and (8).

#### Cross-References

Commission abolished and functions transferred, sec. 82A-404.

### CHAPTER 3—MONTANA CIGARETTE SALES ACT

- Section 51-301. Declaration of policy.  
 51-302. Short title.  
 51-303. Definitions.  
 51-304. Practices declared unlawful—penalty—prima facie evidence of unlawful intent.  
 51-305. Sales from wholesaler to wholesaler.  
 51-306. Combination sales.  
 51-307. Exceptions.  
 51-308. Sales to meet competition.  
 51-309. Contracts in violation void.  
 51-310. Evidence to be considered as bearing on bona fides of cost.  
 51-311. Cigarettes purchased outside ordinary trade channels.  
 51-312. Cost survey.  
 51-313. Civil suits for violation of act.  
 51-314. Powers of board.

**51-301. Declaration of policy.** It is hereby declared that the advertising, offering for sale or sale of cigarettes below cost, in the retail and wholesale trades, with the intent of injuring competitors or lessening competition, is an unfair and deceptive business practice. It is hereby declared to be the policy of the state to promote the public welfare and it is the purpose of this act to carry out that policy in the public interest and stabilize the sale of cigarettes, maximize and protect the state revenues from this source.

**History:** En. Preamble, Ch. 258, L. 1965.

#### Title of Act

An act to prevent unfair competition and unfair trade practices in the sale of cigarettes; to prohibit sales of cigarettes



below cost; to protect and stabilize the collection of taxes on the sale of cigarettes and revenues from the licensing of persons engaged in the sale of cigarettes; to confer powers and impose duties on the state

board of equalization and on persons, as herein defined, engaged in the sale of cigarettes at retail or wholesale; and providing remedies and imposing penalties for violations thereof.

**51-302. Short title.** This act shall be known, designated and cited as "The Montana Cigarette Sales Act."

**History:** En. Sec. 1, Ch. 258, L. 1965.

**51-303. Definitions.** When used in this act, the following words and phrases shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning: (1) "Person" shall mean and include any individual, firm, association, company, partnership, corporation for profit or nonprofit corporation, joint stock company, club, agency, syndicate, co-operative, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary and conservator.

(2) "Wholesaler" shall include any person who:

(a) purchases cigarettes directly from the manufacturer; or

(b) purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purpose of bona fide resale to retail dealers; or

(c) services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of cigarettes.

Nothing contained herein shall prevent a person from qualifying in different capacities as both "wholesaler" and "retailer" under the applicable provisions of this act.

(3) "Retailer" shall mean and include any person who operates a store, stand, booth or concession for the purpose of making sales of cigarettes at retail.

(4) "Administrative agency" or "department" shall mean the state department of revenue of Montana and, where the meaning or the context so requires, all deputies and employees duly authorized by such board.

(5) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(6) "Sale" shall mean any transfer for a consideration, exchange, barter, gift, offer for sale and distribution, in any manner, or by any means whatever.

(7) "Sell at wholesale," "sale at wholesale" and "wholesale" sales shall mean and include any bona fide transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or in the

usual conduct of the wholesaler's business, to a retailer for the purpose of resale.

(8) "Sell at retail," "sale at retail" and "retail sales" shall mean and include any transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or usual conduct of the seller's business, to the purchaser for consumption or use.

(9) "Basic cost of cigarettes" shall mean the invoice cost of cigarettes to the retailer or wholesaler, as the case may be, or the replacement cost of cigarettes to the retailer or wholesaler, as the case may be, in the quantity last purchased, whichever is lower.

(10) (a) The term "cost to the wholesaler" shall mean the "basic cost of cigarettes" to the wholesaler plus the "cost of doing business by the wholesaler," as evidenced by the standards and methods of accounting regularly employed by the said wholesaler in his determination of costs for income tax reporting purposes for the total operation of his establishment and shall include within said costs, without limitation, labor costs (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, business taxes, insurance and advertising. The cost of doing business by a wholesaler shall also include any rebates, patronage dividends or concessions no matter how defined, and any and all other indirect or overhead costs with respect to the operation of the establishment of the said wholesaler, expressed as a percentage and applied to the "basic cost of cigarettes."

(b) In the absence of the filing with the department of proof which the department declares to be satisfactory of a lesser or higher cost of doing business by the wholesaler making the sale, the "cost of doing business by the wholesaler" shall be presumed to be five per centum (5%) of the "basic cost of cigarettes" to the wholesaler, plus cartage to the retail outlet, if performed or paid for by the wholesaler, which cartage cost, in the absence of the filing with the department of satisfactory proof of a lesser or higher cost, shall be considered to be three-fourths of one per centum ( $\frac{3}{4}$  of 1%) of the "basic cost of cigarettes" to the wholesaler.

(11) (a) The term "cost to the retailer" shall mean the "basic cost of cigarettes" to the retailer plus the "cost of doing business by the retailer" as evidenced by the standards and methods of accounting regularly employed by the said retailer in his determination of costs for income tax reporting purposes for the total operation of his establishment and shall include within said costs, without limitation, labor costs, (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, business taxes, insurance, and advertising, including any rebates or concessions no matter how defined, and any and all other indirect or overhead costs with respect to the operation of the establishment of the said retailer, expressed as a percentage and applied to the "basic costs of cigarettes"; provided, however, that any retailer who purchases from the manufacturer or from any other person at or at less than or about the price normally and

usually charged for purchases in wholesale quantities shall, in determining "cost to the retailer," pursuant to this subsection, add the "cost of doing business by the wholesaler," as determined in subparagraph 10 (b) of this act, to the "basic cost of cigarettes" to said retailer, as well as the "cost of doing business by the retailer."

(b) In the absence of the filing with the department of satisfactory proof of a lesser or higher cost of doing business by the retailer making the sale, the "cost of doing business by the retailer" shall be presumed to be ten per centum (10%) of the "basic cost of cigarettes" to the retailer.

(c) In the absence of the filing with the department of satisfactory proof of a lesser or higher cost of doing business, the "cost of doing business by the retailer," who, in connection with the retailer's purchase, received not only the discounts ordinarily allowed upon purchases by a retailer, but also, in whole or part, the discounts ordinarily allowed upon purchases by a wholesaler, shall be presumed to be ten per centum (10%) of the sum of the "basic cost of cigarettes" and the "cost of doing business by the wholesaler."

(12) "Business day" shall mean any day other than a Sunday or a legal holiday.

History: En. Sec. 2, Ch. 258, L. 1965; amd. Sec. 1, Ch. 130, L. 1967; amd. Sec. 16, Ch. 391, L. 1973.

#### Amendments

The 1967 amendment in subparagraph (10)(a) substituted "by the standards and methods \* \* \* shall include within said costs" for "accounting, which shall include allocation of overhead costs and expenses, paid or incurred, and must include" after "as evidenced by" and added the last sentence; in subparagraph (11) (a) substituted "the said retailer \* \* \* shall include within said costs" for "him in his allocation of overhead costs and expenses, paid or incurred, and must include" after "employed by," inserted "costs" after "labor," inserted "business" before "taxes," inserted "including any rebates \* \* \* the 'basic costs of cigarettes'" after "advertising," inserted "however" after "provided," substituted "purchases from the manufacturer \* \* \*

wholesale quantities" for "in connection with the retailer's purchases by a wholesaler" after "any retailer who," substituted "as determined in" for "as defined in section 2" before "subparagraph (10) (b)," and added "(b)" after "subparagraph (10)."

The 1973 amendment substituted "'department'" for "'board'" and "department of revenue" for "board of equalization" in subdivision (4); and substituted "department" for "board" in subdivisions (10)(b) and (11)(b) and (c).

#### Cost to Wholesaler

Board of equalization formula requiring cigarette wholesaler to reduce wholesale price by tax discount provided for under section 84-5606.12 was improper because full face value of the tax insignia was to be used in determining wholesale price. *Montana Assn. of Tobacco & Candy Distributors v. State Board of Equalization*, 156 M 108, 476 P 2d 775.

**51-304. Practices declared unlawful—penalty—prima facie evidence of unlawful intent.** It shall be unlawful and a violation of this act:

(1) For any retailer or wholesaler with intent to injure a competitor or substantially lessen competition;

(a) To advertise, offer to sell or sell, at retail or wholesale, cigarettes at less than cost to such a retailer or wholesaler, as the case may be.

(b) To offer a rebate in price, to give a rebate in price, to offer a concession of any kind, or to give a concession of any kind or nature whatever in connection with the sale of cigarettes if such rebate or con-



cession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or concession may lawfully be given which is sold by said wholesaler or retailer in the ordinary course of his trade or business.

(2) For any retailer:

(a) To induce or attempt to induce or to procure or attempt to procure the purchase of cigarettes at a price less than "cost to the wholesaler," as defined in this act.

(b) To induce or attempt to induce or to procure or attempt to procure any rebate or concession of any kind or nature whatever in connection with the purchase of cigarettes.

(3) Any retailer or wholesaler who violates the provisions of this section shall be guilty of a misdemeanor and shall be prosecuted and punished by a fine of not more than five hundred dollars (\$500) for each such offense. Any individual who, as a director, officer, partner, member or agent of any person violating the provisions of this act, assists or aids, directly or indirectly, in such violation, shall, equally with the person for whom he acts, be responsible therefor and subject to the punishment and penalties set forth herein.

(4) Evidence of advertisement, offering to sell or sale of cigarettes by any retailer or wholesaler at less than cost to him, or evidence of any offer of a rebate in price, or the giving of a rebate in price, or an offer of a concession, or the giving of a concession of any kind or nature whatever in connection with the sale of cigarettes if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or concession may lawfully be given which is sold by said wholesaler or retailer in the ordinary course of his trade or business, or the inducing or attempt to induce, or the procuring or the attempt to procure the purchase of cigarettes at a price less than cost to the wholesaler or the retailer, shall be prima facie evidence of intent to injure competitors or substantially lessen competition.

History: En. Sec. 3, Ch. 258, L. 1965.

**51-305. Sales from wholesaler to wholesaler.** When one wholesaler sells cigarettes to any other wholesaler, the former shall not be required to include in his selling price to the latter "cost to the wholesaler," as provided by section 2 [51-303], subparagraph (10) of this act, except that no such sale shall be made at a price less than the "basic cost of cigarettes," as defined in said section 2 [51-303], subparagraph (9) of this act, but the latter wholesaler, upon resale to a retailer, shall be considered to be the wholesaler governed by the provisions of said section 2 [51-303], subparagraph (10) of this act.

History: En. Sec. 4, Ch. 258, L. 1965.

**51-306. Combination sales.** In all advertisements, offers for sale or sales involving two or more items, at least one of which items is cigarettes, at a combined price, and in all advertisements, offers for sale or sales involving the giving of any gift or concession of any kind whatever (whether it be coupons or otherwise) if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or concession may lawfully be given which is sold by said wholesaler or retailer in the ordinary course of his trade or business, the retailer's or wholesaler's combined selling price shall not be below the "cost to the retailer" or the "cost to the wholesaler," respectively, of the total costs of all articles, products, commodities, gifts and concessions included in such transactions.

**History:** En. Sec. 5, Ch. 258, L. 1965.

**51-307. Exceptions.** The provisions of this act shall not apply to sales at retail or sales at wholesale made (a) as an isolated transaction and not in the usual course of business; (b) where cigarettes are advertised, offered for sale, or sold in bona fide clearance sales for the purpose of discontinuing trade in such cigarettes and said advertising, offer to sell, or sale, shall state the reason thereof and the quantity of such cigarettes advertised, offered for sale, or sold as imperfect or damaged, and said advertising, offer to sell, or sale, shall state the reason therefor and the quantity of such cigarettes advertised, offered for sale, or to be sold; (c) where cigarettes are sold upon the final liquidation of a business; or (d) where cigarettes are advertised, offered for sale, or sold by any fiduciary or other officer acting under the order or direction of any court.

**History:** En. Sec. 6, Ch. 258, L. 1965.

**51-308. Sales to meet competition.** (a) Any retailer may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at cost to him as a retailer as prescribed in this act. Any wholesaler may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is rendering the same type of service and is selling the same article at cost to him as a wholesaler, as prescribed in this act. The price of cigarettes advertised, offered for sale, or sold under the exceptions specified in section 6 [51-307] shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt sale be considered the price of a competitor within the purview of this section.

(b) In the absence of proof of the "price of a competitor," under this section, the "lowest cost to the retailer," or the "lowest cost to the wholesaler," as the case may be, determined by any "cost survey," made pursuant to section 11 [51-312] of this act, may be considered to be the "price of a competitor," within the meaning of this section.

**History:** En. Sec. 7, Ch. 258, L. 1965.

**51-309. Contracts in violation void.** Any contract, expressed or implied, made by any person in violation of any of the provisions of this act, is declared to be an illegal and void contract and no recovery thereon shall be had.

**History:** En. Sec. 8, Ch. 258, L. 1965.

**51-310. Evidence to be considered as bearing on bona fides of cost.** (a) In determining "cost to the retailer" and "cost to the wholesaler," the board or a court shall receive and consider as bearing on the bona fides of such cost, evidence tending to show that any person complained against under any of the provisions of this act purchased cigarettes, with respect to the sale of which complaint is made, at a fictitious price, or upon terms, or in such a manner, or under such invoices, as to conceal the true cost, discounts or terms of purchase, and shall also receive and consider as bearing on the bona fides of such cost, evidence of the normal, customary and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.

(b) Merchandise given gratis, or payment made to a retailer or wholesaler by the manufacturer thereof for display, or advertising, or promotion purposes or otherwise, shall not be considered in determining the cost of cigarettes to the retailer or wholesaler.

**History:** En. Sec. 9, Ch. 258, L. 1965.

**51-311. Cigarettes purchased outside ordinary trade channels.** In establishing the cost of cigarettes to the retailer or wholesaler, the invoice cost of said cigarettes purchased at a forced, bankrupt or closeout sale, or other sale outside of the ordinary channels of trade, may not be used as a basis for justifying a price lower than one based upon the replacement cost of the cigarettes to the retailer or wholesaler in the quantity last purchased, through the ordinary channels of trade.

**History:** En. Sec. 10, Ch. 258, L. 1965.

**51-312. Cost survey.** Where a cost survey pursuant to cost accounting practices, including those defined in section 2 [51-303] (10) (a), has been made by the board, or by a trade association or other industry group, for the trading area in which the offense is committed, to establish the lowest "cost to the retailer" and the lowest "cost to the wholesaler," said cost survey shall be considered to be competent evidence for use in proving the cost to the person complained against within the provisions of this act.

**History:** En. Sec. 11, Ch. 258, L. 1965.

**51-313. Civil suits for violation of act.** (a) In addition to penalties provided by section 3 [51-304] of this act, any person injured by any violation of this act, or any trade association which is representative of such a person, may maintain an action in any court of equitable jurisdiction to prevent, restrain or enjoin such violation. If in such action a violation of this act shall be established, the court shall enjoin and



restrain or otherwise prohibit such violation and, in addition thereto, shall assess in favor of the plaintiff and against the defendant the costs of the suit and reasonable attorney's fee. In such action it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved, the plaintiff in said action, in addition to such injunctive relief and fees and costs of suit, shall be entitled to recover from the defendant the amount of actual damages sustained by the plaintiff.

(b) In the event no injunctive relief is sought or required, any person injured by a violation of this act may maintain an action for damages alone in any court of competent jurisdiction and the measure of damages in such action shall be the same as prescribed in subsection (a) of this section.

History: En. Sec. 12, Ch. 258, L. 1965.

**51-314. Powers of board.** (a) In addition to the penalties and rights imposed and set forth in sections 3 [51-304] and 12 [51-313] of this act, the board shall enforce the provisions of this act. The board shall have the power to adopt, amend and repeal rules and regulations necessary to enforce and administer the provisions of this act. The board is given full power and authority to revoke or suspend the license or permit of any wholesale or retail cigarette dealer in the state of Montana upon sufficient cause appearing of the violation of this act or upon the failure of such licensee or permittee to comply with any of the provisions of this act.

(b) No license or licenses shall be suspended or revoked except upon notice to the licensee, and after a hearing prescribed by said board at its principal office. The board, upon a finding by it that the licensee has failed to comply with any provisions of this act or any rule or regulation promulgated thereunder, shall, in the case of the first offender, suspend the license or licenses of the said licensee for a period of not less than five (5) nor more than twenty (20) consecutive business days, and, in the case of a second or plural offender, shall suspend said license or licenses for a period of not less than twenty (20) consecutive business days nor more than twelve (12) months, and, in the event the board finds the offender has been guilty of willful and persistent violations, he may revoke such licensee's license or licenses.

(c) Any person whose license or licenses have been so revoked may apply to the board at the expiration of one year for a reinstatement of his license or licenses. Such license or licenses may be reinstated by the board if it shall appear to the satisfaction of said board that the licensee will comply with the provisions of this act and the rules and regulations promulgated thereunder.

(d) No person whose license has been suspended or revoked shall sell cigarettes or permit cigarettes to be sold during the period of such suspension or revocation on the premises occupied by him or upon other premises controlled by him or others or in any other manner or form whatever. Nor shall any disciplinary proceedings or action be barred or abated by the expiration, transfer, surrender, continuance, renewal or extension of any license issued under the provisions of the "cigarette tax

law," as provided in articles of chapter 11 of the Revised Codes of Montana, 1947.

Any determination by the board and any order of suspension or revocation of a license or licenses thereunder, or refusal to reinstate a license or licensee after revocation, shall be reviewable by the court in a proper case and in proceedings as provided by the procedural law of this jurisdiction.

**History:** En. Sec. 13, Ch. 258, L. 1965.

**Separability Clause**

Section 14 of Ch. 258, Laws 1965 read "Provisions of act severable. The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the re-

mainder of this act shall continue in full force and effect."

**Repealing Clause**

Section 15 of Ch. 258, Laws 1965 repealed all acts and parts of acts in conflict therewith.

**Cross-References**

Cigarette tax, secs. 84-5606 to 84-5606.31.

CHAPTER 4—UNFAIR COMPETITION, DISCRIMINATION AND COMBINATIONS IN RESTRAINT OF TRADE

Section 51-401 to 51-404. [Transferred from Title 94.]  
51-405. Penalty for violation of law.  
51-406 to 51-408. [Transferred from Title 94.]  
51-409. Penalty for violation of law.  
51-410 to 51-414. [Transferred from Title 94.]

51-401 to 51-404. [Transferred from Title 94.]

**Compiler's Notes**

These sections were originally numbered 94-1104, 94-1105, 94-1107, and 94-1108. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here

but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
51-401	94-1104
51-402	94-1105
51-403	94-1107
51-404	94-1108

**51-405. (10906) Penalty for violation of law.** Any person, firm, or corporation violating the provisions of section 51-403, whether as principal or agent, shall, upon conviction thereof, be fined not less than two hundred dollars (\$200) nor more than ten thousand dollars (\$10,000) for each offense.

**History:** En. Sec. 3, Ch. 8, L. 1913; amd. Sec. 3, Ch. 80, L. 1917; re-en. Sec. 10906, R. C. M. 1921; Sec. 94-1109, R. C. M. 1947; redes. 51-405 and amd. by Sec. 23, Ch. 513, L. 1973.

be found under sec. 94-1109 in bound Volume Eight.

**Amendments**

The 1973 amendment renumbered this section; substituted the reference to section 51-403 for a reference to section 94-1107; and made a minor change in style.

**Compiler's Notes**

The previous text of this section may

51-406 to 51-408. [Transferred from Title 94.]

**Compiler's Notes**

These sections were originally numbered 94-1110 to 94-1112. Section 29, Ch.

513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are

not reprinted here but may be found in bound Volume Eight as follows:

**New Sec.**

51-406  
51-407  
51-408

**Vol. 8**

94-1110  
94-1111  
94-1112

**51-409. (10910) Penalty for violation of law.** Any person, firm, or corporation violating the provisions of section 51-407, whether as principal or agent, shall, upon conviction thereof, be fined not less than two hundred dollars (\$200) nor more than ten thousand dollars (\$10,000) for each offense.

**History:** En. Sec. 3, Ch. 7, L. 1913; re-en. Sec. 10910, R. C. M. 1921; Sec. 94-1113, R. C. M. 1947; redes. 51-409 and amd. by Sec. 24, Ch. 513, L. 1973.

**Compiler's Notes**

The previous text of this section may be found under sec. 94-1113 in bound Volume Eight.

**Amendments**

The 1973 amendment renumbered this section; substituted the reference to section 51-407 for a reference to section 94-1111; and made a minor change in style.

**51-410 to 51-414. [Transferred from Title 94.]****Compiler's Notes**

These sections were originally numbered 94-1114 to 94-1118. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

**New Sec.**

51-410  
51-411  
51-412  
51-413  
51-414

**Vol. 8**

94-1114  
94-1115  
94-1116  
94-1117  
94-1118





## TITLE 52—MORTGAGES

- Chapter 1. Mortgages in general, 52-114, 52-116, 52-117.  
2. Mortgages of real property, 52-212.  
3. Security interests in personal property, 52-312 to 52-314, 52-319 to 52-323.  
4. Small tract financing act, 52-401 to 52-417.

### CHAPTER 1—MORTGAGES IN GENERAL

- Section 52-114. Assignment of mortgage—recording—notice—address of assignee prerequisite to recording.  
52-116. Recording of subordination or waiver agreements—real estate.  
52-117. Uniform Commercial Code—applicability.

**52-114. (8259) Assignment of mortgage—recording—notice—address of assignee prerequisite to recording.** An assignment of a real estate mortgage may be recorded in like manner as a real estate mortgage and the record thereof shall operate as due and legal notice to the mortgagor and all persons subsequently deriving title to the mortgage from the assignor as well as to all other persons including subsequent purchasers, encumbrancers, mortgagees or other lien holders.

Any such assignment shall contain the assignee's post-office address at his place of residence, and shall not be entitled to be recorded or filed unless it contains such post-office address. [Effective January 1, 1965.]

**History:** En. Sec. 3823, Civ. C. 1895; re-en. Sec. 5744, Rev. C. 1907; re-en. Sec. 8259, R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1925; amd. Sec. 1, Ch. 159, L. 1935; amd. Sec. 11-131, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2934.

#### Amendment

The 1963 amendment deleted "and an assignment of a chattel mortgage may be filed in like manner as a chattel mortgage" before "and the record thereof" in the first paragraph.

**52-116. Recording of subordination or waiver agreements—real estate.** That a subordination agreement or a waiver in favor of subsequent purchasers, encumbrancers or mortgagees as regards any real estate mortgage of record or the property therein included may be recorded in like manner as a real estate mortgage, and such record shall operate as due and legal notice to the mortgagor and the mortgagee and to all other interested persons. Any such subordination agreement or waiver shall be valid and binding so far as the mortgage therein referred to or the property covered by such mortgage is concerned, when executed by the record holder of the mortgage involved. [Effective January 1, 1965.]

**History:** En. Sec. 1, Ch. 126, L. 1937; amd. Sec. 11-132, Ch. 264, L. 1963.

#### Amendment

The 1963 amendment deleted "and a subordination agreement or a waiver in favor of subsequent purchasers, encumbrancers or mortgagees as regards any chattel mortgage on file, or the personal

property therein described, may be filed in like manner as a chattel mortgage" before "and such record" in the first sentence; deleted "or such filing as the case may be" after "and such record" in the first sentence; and corrected an apparent typographical error which originated in the Laws of 1937.

52-117. Uniform Commercial Code—applicability. In the event of conflict between any provision of this chapter and the Uniform Commercial Code, the latter shall govern. [Effective January 1, 1965.]

History: En. 52-117 by Sec. 11-133, Ch. 264, L. 1963.

## CHAPTER 2—MORTGAGES OF REAL PROPERTY

Section 52-212. Mortgages and deeds of trust covering real and personal property.

52-212. (8273) Mortgages and deeds of trust covering real and personal property. All mortgages and deeds of trust covering both real and personal property, executed by a corporation, association or partnership, or by an individual or individuals, are governed by the law relating to mortgages or deeds of trust of real property so far as the real property is concerned, and by the Uniform Commercial Code—Secured Transactions, so far as the personal property is concerned. [Effective January 1, 1965.]

History: En. Sec. 3849, Civ. C. 1895; re-en. Sec. 5756, Rev. C. 1907; amd. Sec. 1, Ch. 72, L. 1921; amd. Sec. 1, Ch. 39, L. 1927; amd. Sec. 1, Ch. 11, L. 1931; amd. Sec. 11-134, Ch. 264, L. 1963.

### Amendment

The 1963 amendment deleted "or assignments for the benefit of creditors" after "deeds of trust" near the beginning of the section; made minor changes in phraseology; added "so far as the real property is concerned, and by the Uniform Commercial Code—Secured Transactions, so far as the personal property is concerned" at the end of the section; deleted from the end of the section language reading, "and must be recorded

in the office of the county clerk of every county where any part of said property is situated, and the same are valid, notwithstanding the possession of such property is retained by such corporation, association or partnership, or by such individual or individuals, but any such mortgages, deeds of trust, or assignments for the benefit of creditors must be accompanied by the affidavit of good faith required to accompany mortgages of personal property, and also by a receipt for an executed copy of the instrument signed on behalf of the corporation by its president, vice-president, secretary, assistant secretary or managing agent" and three other sentences, for text of which see parent volume.

## CHAPTER 3—SECURITY INTERESTS IN PERSONAL PROPERTY

Section 52-312. Foreclosure of security interests in personal property—by action—by sheriff's sale.

52-313. Sales—commencement and postponement.

52-314. Report of sales, and filing thereof.

52-319. Notices of security agreements covering livestock, renewals, assignments and satisfactions to be filed by department of livestock—list to be furnished stock inspectors—livestock markets not liable when notice not filed.

52-320. Contents of notices.

52-321. Duty of secured parties to file satisfactions of security agreements.

52-322. Fees—disposal of.

52-323. Department of livestock not responsible for collection or payment of money under security agreements.

52-301 to 52-311. (8275 to 8285) Repealed.

### Repeal

These sections (Secs. 1, 2, Ch. 81, L. 1907; Secs. 1 to 11, Ch. 86, L. 1913; Sec. 1, Ch. 94, L. 1915; Sec. 1, Ch. 152, L. 1919; Sec. 1, Ch. 183, L. 1919; Sec. 1, Ch. 32, L. 1923; Sec. 1, Ch. 116, L. 1925; Sec. 1, Ch. 36, L. 1941; Sec. 1, Ch. 149, L. 1949;

Secs. 1, 2, Ch. 67, L. 1961), relating to execution, filing, duration, subrogation, protection, and proof of mortgages on personal property, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.



**52-312. (8286) Foreclosure of security interests in personal property—by action—by sheriff's sale.** An action for the foreclosure of a security interest in personal property may be commenced and conducted in the same manner as provided by law for the foreclosure of mortgages upon real property, and the same may be joined in an action for the recovery of the possession of the property subject to the security interest; but the remedial scope of proceedings for the foreclosure of interests subject to the Uniform Commercial Code—Secured Transactions is governed by Part 5 thereof.

A security agreement covering personal property may contain a clause authorizing the sheriff of the county in which said property, or any part thereof, may be, on request of the secured party and the delivery to the sheriff of a copy of such security agreement, to take possession of such property in case of default and to sell the same. If a security agreement contains such clause and if the secured party complies with the terms thereof, it is hereby made the duty of such sheriff, upon the request of the secured party or his legal representative or assigns, to take possession of such property and to advertise and sell the whole or any part of the same; and at such sale the secured party, or his representatives or assigns, may, in good faith, purchase the property so sold, or any part thereof. The sheriff shall require a reasonable indemnity bond from the secured party or his assigns before taking possession of or selling the said property. Notice of sale, application of the proceeds, liability for deficiency, and effect of disposition shall be as provided in section 9-504 [87A-9-504] of the Uniform Commercial Code. [Effective January 1, 1965.]

**History:** En. Sec. 3872, Civ. C. 1895; re-en. Sec. 5769, Rev. C. 1907; amd. Sec. 12, Ch. 86, L. 1913; re-en. Sec. 8286, R. C. M. 1921; amd. Sec. 11-135, Ch. 264, L. 1963.

#### **Amendment**

The 1963 amendment substituted "security interest" for "mortgage" throughout the section and made numerous other changes. For previous text, see parent volume.

#### **Deficiency Judgment after Foreclosure Sale**

Deficiency judgment after foreclosure sale was proper even though sale was not public and contract contained clause that "notice [be] given in the manner provided in Section 52-312," since mortgagee was given power of sale by contract, with contract setting forth statute as an acceptable method of sale. *Bell v. Cole*, 154 M 43, 459 P 2d 692.

**52-313. (8287) Sales—commencement and postponement.** All sales made under the provisions of this act shall be commenced between the hours of nine o'clock in the morning and five o'clock of the afternoon of the day specified in the notice, and within thirty days after the seizure of the property, unless the sale shall be postponed. Any sale may be postponed at the discretion of the sheriff one week, by public announcement at the time designated for the sale to take place when there are no bidders, or when the amount offered is grossly inadequate, or upon the request of the debtor. [Effective January 1, 1965.]

**History:** En. Sec. 13, Ch. 86, L. 1913; re-en. Sec. 8287, R. C. M. 1921; amd. Sec. 1, Ch. 13, L. 1953; amd. Sec. 11-136, Ch. 264, L. 1963.

#### **Amendment**

The 1963 amendment substituted "deb-

tor" for "mortgagor" at the end of the section.

#### **Notice of Sale**

Where notice of foreclosure sale of mortgaged sheep was posted out of sight of the actual sale and misnamed the location

of the sale, mortgagee had failed to fulfill the strict statutory requirements in enforcing the lien and the sale was void.

Goggins v. Bookout, 141 M 449, 378 P 2d 212, distinguished in Bell v. Cole, 154 M 43, 459 P 2d 692.

**52-314. (8288) Report of sales, and filing thereof.** Within ten days after the sale of any property subject to a security interest, as herein provided, the person making the sale shall make out in writing a full report, under oath, of all the proceedings in such foreclosure, specifying particularly the property sold, the amount received therefor, the name of the person to whom sold, the amount of the costs and expenses itemized, a copy of the notice of sale, a statement of the manner in which notice of the sale was given, and the disposition made by him of the proceeds of the sale, and shall file the same in the office of the county clerk and recorder, or other filing officer, where the financing statement respecting the security agreement is filed; which report shall be received in all courts as prima-facie evidence of the facts therein stated. The county clerk and recorder or other filing officer shall properly index said report and attach the report of sale to the financing statement on file. [Effective January 1, 1965.]

**History:** En. Sec. 14, Ch. 86, L. 1913; re-en. Sec. 8288, R. C. M. 1921; amd. Sec. 11-137, Ch. 264, L. 1963.

#### **Amendment**

The 1963 amendment substituted "property subject to a security interest" near the beginning of the section for "mortgaged property"; substituted "a statement of the manner in which notice of the sale

was given" for "with the statement that the same was posted as herein provided"; inserted "or other filing officer" after "county clerk and recorder" in two places; substituted "financing statement respecting the security agreement" near the end of the first sentence and "financing statement" in the second sentence for "mortgage."

**52-315 to 52-317. (8289 to 8290.1) Repealed.**

#### **Repeal**

These sections (Secs. 15, 16, Ch. 86, L. 1913; Sec. 1, Ch. 100, L. 1923; Sec. 1, Ch. 3, L. 1941), relating to satisfaction of

chattel mortgages and to mortgages on crops and livestock, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

**52-319. (3308.1) Notices of security agreements covering livestock, renewals, assignments and satisfactions to be filed by department of livestock—list to be furnished stock inspectors—livestock markets not liable when notice not filed.** The department of livestock shall accept and file notices of security agreements, renewals, assignments, and satisfactions covering livestock owned by a person, firm, corporation, or association, and bearing his recorded brand, and shall list the notices on the official records of marks and brands kept by it. The department shall also list the notices in the offices of the stock inspectors, employed by the department of livestock and stationed at the central livestock markets where records are kept of marks and brands. All forms on which the notices are given shall be prescribed by the department of livestock and furnished by the secured party, who gives the notice. A livestock market to which livestock is shipped may not be held liable to any secured party for the proceeds of livestock sold through the livestock market by the debtor unless notice of the security agreement is filed as hereinbefore provided.

**History:** En. Sec. 1, Ch. 91, L. 1935; 11-138, Ch. 264, L. 1963; amd. Sec. 191, amd. Sec. 1, Ch. 36, L. 1949; amd. Sec. Ch. 310, L. 1974.

**Amendments**

The 1963 amendment substituted "security agreements," "secured party" in two places, "debtor," and "security agreement" respectively for "chattel mortgages," "mortgagee of livestock," "mortgagee," "mortgagor," and "mortgage"; and made a minor change in phraseology.

The 1974 amendment substituted references to "department of livestock" in the

caption and first sentence for references to "recorder of marks and brands" and "general recorder of marks and brands of the state of Montana"; substituted references to "department" and "department of livestock" throughout the section for references to "livestock commission"; and made minor changes in phraseology and punctuation.

**52-320. (3308.2) Contents of notices.** The notices shall consist of a statement showing the date of security agreement, the names and addresses of the debtors and secured parties, or holders and owners thereof, a description of the livestock covered by the security agreement, and in case of notice of renewal, the notice shall state the date of renewal and in the case of a notice of assignment of a security interest, the notice shall state the date of the assignment, and a description of the security agreement to which the assignment is made and the parties to the assignment, and any additional information which is required by the department of livestock.

**History:** En. Sec. 2, Ch. 91, L. 1935; amd. Sec. 11-139, Ch. 264, L. 1963; amd. Sec. 192, Ch. 310, L. 1974.

**Amendments**

The 1963 amendment substituted "security interests" for "mortgage" and made

numerous changes in the required contents of the notices.

The 1974 amendment substituted "department of livestock" for "livestock commission of the state of Montana" at the end of the section and made minor changes in phraseology.

**52-321. (3308.3) Duty of secured parties to file satisfactions of security agreements.** The secured parties, who filed notices of security agreements, renewals, and assignments, with the department of livestock, as provided for in this chapter, shall file notices of satisfaction of the security agreements with the department of livestock immediately upon the satisfaction of the security agreement.

**History:** En. Sec. 3, Ch. 91, L. 1935; amd. Sec. 11-140, Ch. 264, L. 1963; amd. Sec. 193, Ch. 310, L. 1974.

**Amendments**

The 1963 amendment substituted "secured parties," "security agreements" in two places, and "security agreement," respectively, for "mortgagees," "chattel

mortgages," "mortgages," and "mortgage."

The 1974 amendment substituted "department of livestock" for "general recorder of marks and brands" in two places; substituted "this chapter" for "this act"; and made minor changes in phraseology and punctuation.

**52-322. (3308.4) Fees—disposal of.** The department of livestock shall charge for filing and listing the notices of security agreements two dollars (\$2) for each recorded brand listed in each security agreement, and for filing and listing each notice of satisfaction, renewal, or assignment of the security agreement, two dollars (\$2) for each recorded brand listed. All fees shall be paid into the earmarked revenue fund for the use of the department of livestock.

**History:** En. Sec. 4, Ch. 91, L. 1935; amd. Sec. 1, Ch. 135, L. 1953; amd. Sec. 96, Ch. 147, L. 1963; amd. Sec. 11-141, Ch. 264, L. 1963; amd. Sec. 1, Ch. 12, L. 1969; amd. Sec. 194, Ch. 310, L. 1974.

**Amendments**

Chapter 147, Laws 1963, substituted "the earmarked revenue fund for use of the livestock commission" for "the live-



stock commission fund" at the end of the section.

Chapter 264, Laws 1963, substituted "security agreement" or "security agreements" for "chattel mortgage" or "chattel mortgages" in three places in the first sentence.

The 1969 amendment increased the filing and listing fees from "one dollar" to "two dollars."

The 1974 amendment substituted "The department of livestock" for "The general recorder of marks and brands" at the beginning of the section; substituted "earmarked revenue fund for the use of the department of livestock" for "earmarked revenue fund for the use of the livestock commission" at the end of the section; and made minor changes in phraseology and punctuation.

**52-323. (3308.5) Department of livestock not responsible for collection or payment of money under security agreements.** The department of livestock, its agents and employees, are not responsible or liable to either debtor or secured party for the collection or payment of any money due the holder of any security agreement covering livestock, or renewals, satisfactions, or assignments thereof as provided in this act, if this act is carried out in good faith.

**History:** En. Sec. 5, Ch. 91, L. 1935; amd. Sec. 11-142, Ch. 264, L. 1963; amd. Sec. 195, Ch. 310, L. 1974.

#### Amendments

The 1963 amendment substituted "debtor or secured party" for "mortgagor or mortgagee"; substituted "security agreement covering livestock" for "livestock mortgage"; and deleted the words "on account of the filing and listing of notices

of chattel mortgage" which preceded "or renewals."

The 1974 amendment substituted "Department of livestock" for "Brand recorder or livestock commission" in the caption; substituted "The department of livestock" for "Neither the general recorder of marks and brands nor the livestock commission" at the beginning of the section; and made minor changes in phraseology and punctuation.

## CHAPTER 4—SMALL TRACT FINANCING ACT

- |         |   |
|---------|---|
| Section | 52-401. Short title.  |
|         | 52-402. Declaration of policy.  |
|         | 52-403. Definitions.  |
|         | 52-404. Authorization of trust indentures.  |
|         | 52-405. Qualifications of trustee.  |
|         | 52-406. Reconveyance upon performance—liability for failure to reconvey.              |
|         | 52-407. Time within which foreclosure must be commenced.                              |
|         | 52-408. Foreclosure by advertisement and sale.  |
|         | 52-409. Notice of sale to be mailed, posted and published.                            |
|         | 52-410. Trustee's deed.   |
|         | 52-411. Possession.   |
|         | 52-412. Discontinuance of foreclosure proceedings when entire amount of default paid. |
|         | 52-413. Disposition of proceeds of sale.  |
|         | 52-414. Deficiency judgment not allowed.  |
|         | 52-415. Requests for copies of notice of sale.  |
|         | 52-416. Trustee's fees and attorney's fees.   |
|         | 52-417. Trust indenture deemed to be mortgage on real property.                       |

**52-401. Short title.** This act may be cited as the "Small Tract Financing Act of Montana."

**History:** En. Sec. 1, Ch. 177, L. 1963.

#### Title of Act

An act authorizing the optional use of trust indentures as security instruments in the financing of small tracts embracing three acres of land, or less; providing for the conveyance of title to a trustee to secure the performance of an obligation

and for reconveyance upon performance; conferring a power of sale upon the trustee under a trust indenture and prescribing the time and manner in which such power may be exercised; providing for the sale of the property at trustee's sale in the event of default; prescribing the form of notice of sale and providing for the recordation, mailing, posting and

publication of notice of sale; providing for trustee's deeds and the form and effect thereof; providing for the disposition of the proceeds of sale; disallowing deficiency judgment in certain cases; providing for possession following sale; defining the fees and expenses chargeable to the grantor of a trust deed; providing for discontinuance of foreclosure by advertisement and sale; relating to the appli-

cability of mortgage laws to trust indenture transactions; amending sections 93-6005, 93-6006, and 93-6007, R.C.M. 1947, relating to sales of real estate under powers of sale in mortgages and rights of redemption, to exclude therefrom trust indentures as defined in this act; and providing a short title, a severability clause and an effective date.

**52-402. Declaration of policy.** Because the financing of homes and business expansion is essential to the development of the state of Montana, and because such financing, usually involving areas of real estate of not more than fifteen (15) acres, has been restricted by the laws relating to mortgages of real property, and because more such financing of homes and business expansion is available if the parties can use security instruments and procedures not subject to all the provisions of the mortgage laws, it is hereby declared to be the public policy of the state of Montana to permit the use of trust indentures for estates in real property of not more than fifteen (15) acres as hereinafter provided.

**History:** En. Sec. 2, Ch. 177, L. 1963; amd. Sec. 1, Ch. 337, L. 1974.

#### **Amendments**

The 1974 amendment increased from three acres to fifteen acres the limit on the size of property to be considered under the act.

#### **Constitutionality**

This act is not unconstitutional on

grounds that it is special legislation favoring rural landowners, that its withdrawal of redemption rights and its notice provisions violate due process, or that it provides for statutory power of sale to be read into all agreements using trust indentures even where agreement between parties does not so provide. *Great Falls Nat. Bank v. McCormick*, 152 M 319, 448 P 2d 991.

**52-403. Definitions.** As used in this act, unless the context requires otherwise:

(1) "Beneficiary" means the person named or otherwise designated in a trust indenture as the person for whose benefit a trust indenture is given, or his successor in interest, and who shall not be the trustee.

(2) "Grantor" means the person conveying real property by a trust indenture as security for the performance of an obligation.

(3) "Trust indenture" means an indenture executed in conformity with this act and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary.

(4) "Trustee" means a person to whom the legal title to real property is conveyed by a trust indenture, or his successor in interest.

(5) "Fifteen (15) acres" means fifteen (15) acres of land. Where the trust indenture states that the real property involved does not exceed fifteen (15) acres, such statement shall be binding upon all parties and conclusive as to compliance with the provisions of this act relative to the power to make a transfer, trust, and power of sale.

**History:** En. Sec. 3, Ch. 177, L. 1963; amd. Sec. 2, Ch. 337, L. 1974.

#### **Amendments**

The 1974 amendment substituted "fifteen (15) acres" for "three (3) acres" in subdivision (5) and in the final sentence.

**52-404. Authorization of trust indentures.** Transfers in trust of any interest in real property of an area not exceeding fifteen (15) acres may be made to secure the performance of an obligation of a grantor, or any other person named in the indenture, to a beneficiary; provided that it shall be unlawful to substitute a trust indenture for any mortgage in existence on the effective date of this act. Where any transfer in trust of any interest in real property is hereafter made to secure the performance of such an obligation, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which such transfer is security; and a trust indenture executed in conformity with this act may be foreclosed by advertisement and sale in the manner hereinafter provided, or, at the option of the beneficiary, by judicial procedure as provided by law for the foreclosure of mortgages on real property. The power of sale may be exercised by the trustee without express provision therefor in the trust indenture.

**History:** En. Sec. 4, Ch. 177, L. 1963; exceeding fifteen (15) acres" in the first  
amd. Sec. 3, Ch. 337, L. 1974. sentence for "not exceeding three (3)  
acres."

**Amendments**

The 1974 amendment substituted "not

**52-405. Qualifications of trustee.** (1) The trustee of a trust indenture under this act shall be:

- (a) An attorney who is licensed to practice law in Montana; or
- (b) A bank, trust company, or savings and loan association authorized to do business in Montana under the laws of Montana or the United States; or
- (c) A title insurance or abstract company authorized to do business in Montana under the laws of Montana.

(2) The beneficiary may appoint a successor trustee at any time by filing for record in the office of the clerk and recorder of each county in which the trust property or some part thereof is situated, a substitution of trustee. The substitution shall identify the trust indenture by stating the names of the original parties thereto and the date of recordation and the book and page where the same is recorded, shall state the name and mailing address of the new trustee, and shall be executed and acknowledged by all of the beneficiaries designated in the trust indenture, or their successors in interest. From the time the substitution is filed for record, the new trustee shall be vested with all the power, duties, authority, and title of the trustee named in the trust indenture and of any successor trustee.

**History:** En. Sec. 5, Ch. 177, L. 1963.

**52-406. Reconveyance upon performance—liability for failure to reconvey.** Upon performance of the obligation secured by the trust indenture, the trustee upon written request of the beneficiary shall reconvey the interest in real property described in the trust indenture to the grantor. In the event the obligation is performed and the beneficiary refuses to request reconveyance or the trustee refuses to reconvey the property, the beneficiary or trustee so refusing shall be liable as provided



by law in the case of refusal to execute a discharge or satisfaction of a mortgage on real property.

**History:** En. Sec. 6, Ch. 177, L. 1963.

**52-407. Time within which foreclosure must be commenced.** The foreclosure of a trust indenture by advertisement and sale or by judicial procedure shall be commenced within the time, including extensions, provided by law for the foreclosure of a mortgage on real property.

**History:** En. Sec. 7, Ch. 177, L. 1963.

**52-408. Foreclosure by advertisement and sale.** (1) The trustee may foreclose a trust indenture by advertisement and sale under this act if:

(a) The trust indenture, any assignments of the trust indenture by the trustee or the beneficiary, and any appointment of a successor trustee are recorded in the office of the clerk and recorder of each county in which the property described in the trust indenture, or some part thereof, is situated;

(b) There is a default by the grantor or other person owing an obligation, the performance of which is secured by the trust indenture, or by their successors in interest, with respect to any provision in the indenture which authorizes sale in the event of default of such provision; and

(c) The trustee or beneficiary shall have filed for record in the office of the clerk and recorder in each county where the property described in the indenture, or some part thereof, is situated, a notice of sale, duly executed and acknowledged by such trustee or beneficiary, setting forth:

(i) The names of the grantor, trustee, and beneficiary in the trust indenture and the name of any successor trustee;

(ii) A description of the property covered by the trust indenture;

(iii) The book and page of the mortgage records where the trust indenture is recorded;

(iv) The default for which the foreclosure is made;

(v) The sum owing on the obligation secured by the trust indenture;

(vi) The trustee's or beneficiary's election to sell the property to satisfy the obligation;

(vii) The date of sale, which shall not be less than 120 days subsequent to the date on which the notice of sale is filed for record, and the time of sale, which shall be between the hours of 9:00 a.m. and 4:00 p.m., Mountain Standard Time;

(viii) The place of sale which shall be at the courthouse of the county or one of the counties where the property is situated, or at the location of the property, or at the trustee's usual place of business if within the county or one of the counties where the property is situated.

(2) A trust deed may be foreclosed by advertisement and sale in the manner hereinafter provided.

**History:** En. Sec. 8, Ch. 177, L. 1963.

52-409. Notice of sale to be mailed, posted and published. (1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be mailed by registered or certified mail to:

(i) The grantor, at the grantor's address as set forth in the trust indenture, or (in the event no address of the grantor is set forth in the trust indenture) at the grantor's last known address;

(ii) Each person designated in the trust indenture to receive notice of sale whose address is set forth therein, at such address;

(iii) Each person who has filed for record a request for a copy of notice of sale within the time and in the manner hereinafter provided, at the address of such person as set forth in such request.

(iv) Any successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at such address;

(v) Any person having a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at such address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be posted in some conspicuous place on the property to be sold;

(c) A copy of the notice of sale shall be published in a newspaper of general circulation published in any county in which the property, or some part thereof, is situated, at least once each week for 3 successive weeks. If there is no such newspaper, then copies of the notice of sale shall be posted in at least 3 public places in each county in which the property, or some part thereof, is situated. The posting or the last publication shall be made at least 20 days before the date fixed for the trustee's sale.

(2) On or before the date of sale, there shall be filed for record in the office of the clerk and recorder of each county where the property, or some part thereof, is situated, affidavits of mailing, posting and publication showing compliance with the requirements of this section. On the date and at the time and place designated in the notice of sale, the trustee or his attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels and any person, including the beneficiary under the trust indenture, but excluding the trustee, may bid at the sale. The person making the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given.

(3) The purchaser at the sale shall pay the price bid in cash, and, upon receipt of payment, the trustee shall execute and deliver a trustee's deed to the purchaser. In the event the purchaser refuses to pay the purchase price, the person conducting the sale shall have the right

to re-sell the property at any time to the highest bidder. The party refusing to pay shall be liable for any loss occasioned thereby, and the person making the sale may also, in his discretion, thereafter reject any other bid of such person.

**History:** En. Sec. 9, Ch. 177, L. 1963.

**52-410. Trustee's deed.** (1) The trustee's deed to the purchaser at the trustee's sale may contain, in addition to a description of the property conveyed, recitals of compliance with the requirements of this act relating to the exercise of the power of sale and the sale, including recitals of the facts concerning the default, the notice given, the conduct of the sale, and the receipt of the purchase money from the purchaser.

(2) When the trustee's deed is recorded in the deed records of the county or counties where the property described in the deed is situated, the recitals contained in the deed and in the affidavits required under subsection (2) of section 9 [52-409 (2)] of this act, shall be prima-facie evidence in any court of the truth of the matters set forth therein, except that the same shall be conclusive evidence in favor of subsequent bona fide purchasers and encumbrancers for value and without notice.

(3) The trustee's deed shall operate to convey to the purchaser, without right of redemption, the trustee's title and all right, title, interest and claim of the grantor and his successors in interest and of all persons claiming by, through or under them, in and to the property sold including all such right, title, interest and claim in and to such property acquired by the grantor or his successors in interest subsequent to the execution of the trust indenture.

**History:** En. Sec. 10, Ch. 177, L. 1963.

**52-411. Possession.** The purchaser at the trustee's sale shall be entitled to possession of the property on the tenth day following the sale, and any persons remaining in possession after that date under any interest, except one prior to the trust indenture, shall be deemed to be tenants at will.

**History:** En. Sec. 11, Ch. 177, L. 1963.

**52-412. Discontinuance of foreclosure proceedings when entire amount of default paid.** Whenever all or a portion of any obligation secured by a trust indenture has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust indenture, including a default in the payment of interest or of any installment of principal, or by reason of failure of the grantor to pay, in accordance with the terms of such trust indenture, taxes, assessments, premiums for insurance or advances made by the beneficiary in accordance with the terms of such obligation or of such trust indenture, the grantor or his successor in interest in the trust property or any part thereof or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate trust indenture, at any time prior to the time fixed by the trustee for the trustee's sale if the power of sale is to be



exercised, may pay to the beneficiary or his successor in interest the entire amount then due under the terms of such trust indenture and the obligation secured thereby (including costs and expenses actually incurred and reasonable trustee's and attorney's fees) other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon all proceedings theretofore had or instituted to foreclose the trust indenture shall be canceled and the obligation and the trust indenture shall be reinstated and shall be and remain in force and effect the same as if no such acceleration had occurred. If the default is cured and the obligation and the trust indenture reinstated in the manner hereinabove provided, the beneficiary, or his assignee, shall, on demand of any person having an interest in the trust property, execute, acknowledge and deliver to him a request that the trustee execute, acknowledge and deliver a cancellation of the recorded notice of sale under such trust indenture. Any beneficiary under a trust indenture, or his assignee, who, for a period of 30 days after such demand refused to request the trustee to execute, acknowledge and deliver such cancellation shall be liable to the person entitled to such request for all damages resulting from such refusal. A cancellation of a recorded notice of sale shall, when executed and acknowledged, be entitled to be recorded and shall be sufficient if it sets forth a reference to the trust indenture and the book and page where the same is recorded, a reference to the notice of sale and to the book and page where the same is recorded and a statement that such notice of sale is canceled.

**History:** En. Sec. 12, Ch. 177, L. 1963.

**52-413. Disposition of proceeds of sale.** The trustee shall apply the proceeds of the trustee's sale as follows: (1) To the costs and expenses of exercising the power of sale and of the sale, including reasonable trustee's fees and attorney's fees;

(2) To the obligation secured by the trust indenture;

(3) The surplus, if any, to the person or persons legally entitled thereto, or the trustee, in his discretion, may deposit such surplus with the clerk and recorder of the county in which the sale took place. Upon depositing such surplus, the trustee shall be discharged from all further responsibility therefor and the clerk and recorder shall deposit the same with the county treasurer subject to the order of the district court of such county.

**History:** En. Sec. 13, Ch. 177, L. 1963.

**52-414. Deficiency judgment not allowed.** When a trust indenture executed in conformity with this act is foreclosed by advertisement and sale, no other or further action, suit or proceedings shall be taken, nor judgment entered for any deficiency, against the grantor or his surety, guarantor, or successor in interest, if any, on the note, bond or other obligation secured by the trust indenture, or against any other person obligated on such note, bond or other obligation.

**History:** En. Sec. 14, Ch. 177, L. 1963.

**52-415. Requests for copies of notice of sale.** At any time subsequent to the recordation of a trust indenture and prior to the recordation of notice of sale under the indenture, any person desiring a copy of any notice of sale under a trust indenture as provided in subsection (1) of section 9 [52-409(1)] of this act may cause to be filed for record in the office of the county clerk and recorder of the county or counties in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of any notice of sale, showing service upon the trustee. The request shall contain the name and address of the person requesting a copy of the notice and shall identify the trust indenture by stating the names of the parties to the indenture, the date of recordation of the indenture, and the book and page where the indenture is recorded. The county clerk and recorder shall immediately make a cross reference of the request to the trust indenture either on the margin of the page where the trust indenture is recorded or in some other suitable place. No request, statement, or notation placed on the record pursuant to this section shall affect title to the property or be deemed notice to any person that any person so recording the request has any right, title, interest in, lien, or charge upon the property referred to in the trust indenture.

**History:** En. Sec. 15, Ch. 177, L. 1963.

**52-416. Trustee's fees and attorney's fees.** Reasonable trustee's fees and attorney's fees to be charged to the grantor in the event of foreclosure by advertisement and sale shall not exceed, in the aggregate, 5% of the amount due on the obligation, both principal and interest, at the time of the trustee's sale. If prior to the trustee's sale the obligation and the trust indenture shall be reinstated in accordance with provisions of section 12 [52-412] of this act, the reasonable trustee's fees and attorney's fees to be charged to the grantor shall not exceed \$150.00. In no event shall trustee's fees and attorney's fees be charged to a grantor on account of any services rendered prior to the commencement of foreclosure.

**History:** En. Sec. 16, Ch. 177, L. 1963.

**52-417. Trust indenture deemed to be mortgage on real property.** A trust indenture is deemed to be a mortgage on real property and is subject to all laws relating to mortgages on real property except to the extent that such laws are inconsistent with the provisions of this act, in which event the provisions of this act shall control. For the purpose of applying the mortgage laws, the grantor in a trust indenture is deemed the mortgagor and the beneficiary is deemed the mortgagee.

**History:** En. Sec. 17, Ch. 177, L. 1963.

#### **Separability Clause**

Section 21 of Ch. 177, Laws 1963 read "Severability clause. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid parts remain in effect. If a part of this act is invalid in one or more of its applications, the part

remains in effect in all valid applications that are severable from the invalid applications."

#### **Effective Date**

Section 22 of Ch. 177, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.





## TITLE 53—MOTOR VEHICLES

- Chapter 1. Registration of motor vehicles—duties of registrar, 53-101, 53-102, 53-104, 53-106, 53-106.1, 53-106.6 to 53-110, 53-112 to 53-115, 53-117, 53-118 to 53-120, 53-122, 53-129, 53-133, 53-136, 53-139, 53-139.1, 53-145 to 53-153.
4. Elimination of reckless driving—responsibility of motor vehicle owners and operators, 53-418, 53-420, 53-428, 53-431, 53-432, 53-438, 53-449, 53-450.
5. State-owned or leased motor vehicles, 53-514 to 53-521.
6. Additional fees or taxes on motor vehicles, 53-639.1, 53-639.2, 53-640, 53-642, 53-644 to 53-647.
7. Reciprocity and proportional registration, 53-701, 53-702, 53-704 to 53-724.
8. Markings on trucks and heavy vehicles, 53-801 to 53-803.
9. Removal and sale of abandoned vehicles, 53-901 to 53-909.
10. Snowmobiles, 53-1012 to 53-1025.1, 53-1026 to 53-1029.
11. Motor vehicle inspections, 53-1101 to 53-1115.

### CHAPTER 1—REGISTRATION OF MOTOR VEHICLES— DUTIES OF REGISTRAR

- Section 53-101. Duties of registrar of motor vehicles—records.
- 53-102. Penalty for violations—enforcement of provisions.
- 53-104. “Motor vehicle” defined.
- 53-106. Number plates.
- 53-106.1. Registration of motor vehicles owned and operated solely as collectors’ items—number plates for such motor vehicles.
- 53-106.6. Special plates—how affixed to car—sale or transfer of auto—revocation or expiration of radio license.
- 53-106.7. Distinctive plates for national guardsmen.
- 53-106.8. Free license plates to disabled veterans.
- 53-106.9. Nontransferability of disabled veterans’ free license plates.
- 53-106.10. Veterans’ free plates limited to one automobile.
- 53-106.11. Violations of act or wrongfully attempting to secure veterans’ free plates a misdemeanor—penalties.
- 53-107. Certificates of registration and ownership—contents, issuance, entry, assignment of numbers—owner’s registration receipt to be signed, carried and exhibited on demand.
- 53-108. Renewal of registration.
- 53-109. Transfer of title or interest.
- 53-109.1. Used motor vehicles—transfer to and from dealers.
- 53-109.2. Applicability of sticker provisions to new car purchases.
- 53-109.3. Temporary windshield sticker.
- 53-109.4. Grace period—penalty.
- 53-110. Filing of liens, rights, procedure, fees.
- 53-112. Fee for original certificate of ownership and transfer of title.
- 53-113. Lost certificates.
- 53-114. Application for registration of motor vehicles and payment of license fees thereon—assessment of motor vehicles in the stock of licensed motor vehicle dealers as merchandise.
- 53-115. Time for making application.
- 53-117. Disposition of taxes.
- 53-118. Application for dealer’s license.
- 53-118.6 to 53-118.10. [Transferred.]
- 53-119. **Must have license plates.**
- 53-119.1. Special permits for vehicles engaged in a single movement on the highways—fee—limitation—county treasurer to issue.
- 53-120. Replacing number plates.
- 53-122. Registration fees of motor vehicles—registration and transfer thereof—public owned vehicles exempt from license or registration fees—license or registration fees for trailers, house trailers, semitrailers and tractors providing for disposition of all fees.

- 53-129. Foreign vehicles used in gainful occupation—reciprocity board may make reciprocal agreements to exempt.
- 53-133. Definitions.
- 53-136. Alteration or forgery of certificate of title or assignment thereof and penalty therefor.
- 53-139. Penalty for sale of vehicle with engine number altered or changed—application for special number.
- 53-139.1. Penalty for altering identification number.
- 53-145. Expiration of registration on transfer of ownership of vehicle—duty to remove plates.
- 53-146. Transfer of license plates to another motor vehicle.
- 53-147. New registration required for transferred vehicle—grace period—penalty—display of proof of purchase.
- 53-148. Personalized license plates authorized.
- 53-149. Color and design of personalized plates.
- 53-150. Definition of personalized license plates.
- 53-151. Personalized license plates restricted to registered owner.
- 53-152. Application for personalized plates—duplication—good taste.
- 53-153. Fees for personalized plates—disposition.

53-101. (1755) Duties of registrar of motor vehicles—records. 1. The warden of the state penitentiary shall be, and is hereby constituted the registrar of motor vehicles, trailers and semitrailers, and as such it shall be his duty to keep a record as hereinafter specified of all motor vehicles, trailers and semitrailers of every kind, and certificates of registration and ownership thereof, and of all dealers in motor vehicles.

2. In the case of motor vehicles, trailers and semitrailers, the record shall show the following: Name of owner, residence by town and county, business address, name and address of conditional sales vendor, mortgagee or other lien holder and amount due under contract or lien, manufacturer of car, manufacturer's designation of style of car or vehicle, identifying number, year of manufacture, character of motive power and shipping weight of car as shown by the manufacturer and the distinctive license number assigned such car or vehicle; and, if a truck or trailer, the number of tons capacity, and such other information as may from time to time be found desirable.

3. The registrar shall file applications for registration received by him from the county treasurers of the state and register the vehicles therein described and the owners thereof in suitable books or on index cards, as follows:

(a) Under distinctive license number assigned to vehicle by the county treasurers.

(b) Alphabetically under name of owners.

(c) Numerically under make and identifying number of vehicle.

(d) Such other index of registration as registrar shall deem expedient. Vehicle registration records and indexes, and driver's license records and indexes, may be maintained by electronic recording and storage media.

4. In the case of dealers the records shall show the information contained in the application for dealer's license as required by section 53-118, as well as the distinctive license number assigned to the dealer.

5. The registrar of motor vehicles shall appoint such deputies, subordinate officers, clerks, investigators and other employees as may be necessary to carry out this act, providing there be selected as many

of the clerical help from the inmates of the state prison as the registrar determines to be possible. The salaries of all such appointees shall be fixed by the registrar of motor vehicles as authorized by the state board of examiners, with respect to salaries of other subordinate state officers and employees.

6. All office equipment, books, files and records belonging to the motor department shall be in the care and general custody and control of the registrar of motor vehicles at the state penitentiary. In order to prevent an accumulation of unneeded records and files the registrar of motor vehicles shall have the authority and it shall be his duty to destroy all records and files which have ceased to be of any value.

7 and 8. \* \* \* [Same as parent volume.]

**History:** En. Sec. 1, Ch. 75, L. 1917; re-en. Sec. 1755; R. C. M. 1921; amd. Sec. 1, Ch. 177, L. 1925; amd. Sec. 1, Ch. 129, L. 1927; amd. Sec. 1, Ch. 181, L. 1929; amd. Sec. 1, Ch. 159, L. 1933; Subdivisions 5 and 6 amd. Secs. 1, 2, Ch. 62, L. 1943; amd. Sec. 1, Ch. 208, L. 1957; amd. Sec. 22, Ch. 177, L. 1965; amd. Sec. 1, Ch. 256, L. 1965; amd. Sec. 1, Ch. 74, L. 1967; amd. Sec. 1, Ch. 115, L. 1969; amd. Sec. 1, Ch. 207, L. 1969; amd. Sec. 1, Ch. 214, L. 1971.

#### Amendments

Chapter 177, Laws 1965, deleted from the beginning of subsection 5 a sentence reading, "The registrar of motor vehicles shall qualify by giving a bond of twenty-five thousand dollars (\$25,000.00), providing for the faithful performance of his duty"; and substituted "The registrar of motor vehicles" for "He" at the beginning of the present first sentence of subsection 5.

Chapter 256, Laws 1965, substituted "information contained in the application for dealer's license as required by section 53-118, as well as the distinctive license number assigned to the dealer" for "name of the applicant, his residence and address by town and county, his business address, the distinctive number assigned him, and the name or names of new cars handled by him" at the end of subsection 4.

The 1967 amendment deleted "of motor and accessories dealers and of operators and chauffeurs" after "semitrailleurs"; inserted "and" before "of all dealers";

and deleted "and automobile accessories and of operators and chauffeurs" after "in motor vehicles" in subsection 1.

Chapter 115, Laws of 1969, substituted "shall be microfilmed and the original destroyed when" for "after the expiration of five (5) years after the date" in subsection (6).

Chapter 207, Laws of 1969, added the second sentence to subsection (3) (d).

The 1971 amendment substituted "unneeded records and files" for "records and files which shall have ceased to be of any value" in the second sentence of subsection 6; and substituted "records and files which have ceased to be of any value" at the end of the subsection 6 for "all correspondence, motor card and application card records after the expiration of five (5) years from the date thereof, and all conditional sales contracts and chattel mortgages and records pertaining thereto shall be microfilmed and the original destroyed when the same have ceased to be liens on the motor vehicles described therein."

#### Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

Registrar's position abolished and functions transferred, sec. 82A-1205(1).

#### References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

**53-102. (1755.1) Penalty for violations—enforcement of provisions.** The violation of any of the provisions of sections 53-101, 53-106, 53-106.1, 53-106.2, 53-106.6, 53-107, 53-108, 53-109, 53-114, 53-115, 53-116, 53-117, 53-119, 53-120 and 53-121, shall constitute a misdemeanor and shall be punishable by a fine of not exceeding twenty-five dollars (\$25.00). Nothing herein contained shall prevent the prosecution of a person for an offense committed under any other law.

It is hereby made mandatory upon all police and peace officers of



the state, of the counties of the state, and of towns, cities and villages to carry out the provisions of sections 53-101, 53-106, 53-106.1, 53-106.2, 53-106.6, 53-107, 53-108 and 53-109, and sections 53-114 to 53-121.

**History:** En. Sec. 2, Ch. 158, L. 1931; amd. Sec. 1, Ch. 122, L. 1961; amd. Sec. 2, Ch. 256, L. 1965.

#### **Amendment**

The 1965 amendment deleted section 53-118 from the list of sections in the first sentence of the first paragraph.

**53-104. (1755.3) "Motor vehicle" defined.** The word "motor vehicle" as used in this title shall include trailers, semitrailers, automobiles, auto trucks, motorcycles, cycle motors, and all other vehicles propelled by their own power, used upon the public highways of the state, excepting steam or gas tractors, or self-propelled wheelchairs or similar vehicles operated by invalids.

**History:** En. Sec. 5, Ch. 158, L. 1931; amd. Sec. 1, Ch. 369, L. 1974.

of this act" near the beginning of the section; added "or self-propelled wheelchairs or similar vehicles operated by invalids" at the end of the section; and made minor changes in phraseology.

#### **Amendments**

The 1974 amendment substituted "this title" for "this act or any of the sections

**53-106. (1757) Number plates. (1)** Every motor vehicle which shall be driven upon the streets or highways of this state shall display both front and rear a number plate, bearing the distinctive number assigned such vehicle. Such number plate shall be in eight series: one series for owners of motor cars, one for owners of motor vehicles of the motorcycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle type which shall bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER," one for franchised dealers in new motor cars (including trucks and trailers) or new and used motor cars (including trucks and trailers) which shall bear the distinctive letter "D" or the word "DEALER," one for dealers in used motor cars only (including used trucks and trailers) which shall bear the distinctive letters "UD" or the letter "U" and the word "DEALER," and one for dealers in trailers and/or semitrailers (new or used) which shall bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER," and all such markings for the aforementioned kinds of dealers' plates shall be placed on the number plates assigned thereto in such position thereon as the registrar may designate. All number plates for motor vehicles shall be issued every other year, provided that number plates will next be issued in the year 1973 and in alternate years thereafter, shall bear a distinctive marking, and shall be furnished by the state. In alternate years the registrar shall provide nonremovable stickers bearing appropriate registration numbers which shall be affixed to the license plates in use.

(2) In the case of motor cars, number plates shall be of metal six inches wide and twelve inches in length, the outline of the state of Montana shall be used as a distinctive border on such license plates, and the word "Montana" with the year shall be placed across the bottom of the plate. Such registration plate shall be treated with a reflectorized background material according to specifications prescribed by the reg-

istrar. An additional fee of fifty (50) cents per year for each registration of a vehicle shall be added to the registration fee. Revenue from this fee shall be forwarded by the respective county treasurers to the state treasurer for deposit in the motor vehicle recording account of the earmarked revenue fund. Disbursements from the motor vehicle recording account shall be made by warrant drawn by the registrar. The distinctive registration numbers shall begin with a number one (1) or with a letter-number combination such as "A 1" or "AA 1," or any other similar combination of letters and numbers and be numbered consecutively for each series of plates. The distinctive registration number or letter-number combination assigned to the vehicle shall appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal base line, and the county number shall be separated from the distinctive registration number by a dash or a dot unless a letter-number combination is used. The dimensions of such numerals and letters shall be determined by the registrar of motor vehicles, provided that all county and registration numbers shall be of equal height.

(3) For the use of tax-exempt motor vehicles, in addition to the markings herein provided, number plates shall have thereon the following distinctive markings:

For vehicles owned by the state the registrar of motor vehicles may designate the prefix number for the various state departments, and all numbered plates issued to state departments shall bear the words "State Owned" and no year number will be indicated thereon as these numbered plates will be of a permanent nature, and will be replaced by the registrar of motor vehicles at such time when the physical condition of numbered plates require same. For vehicles owned by the counties, municipalities and school districts and used and operated by officials and employees thereof in line of duty as such, and for vehicles on loan from the United States government or the state of Montana, to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty as such, there shall be placed on the number plates assigned thereto, in such position thereon as the registrar may designate, the letter "X" or the word "EXEMPT." Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of said counties shall begin with number 1 and be numbered consecutively.

(4) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and trailers, there shall appear the letter "T" or the word "TRUCK" for plates assigned to trucks and the letters "TR" or the word "TRAILER" for plates assigned to trailers, and housetrainers, and the letters "MC" or the word "CYCLE" for plates assigned to vehicles of the motorcycle type.

Number plates issued to a passenger car, truck, trailer or vehicle of the motorcycle type may be transferred only to a replacement passenger car, truck, trailer or motorcycle type vehicle.

(5) For the purpose of this act, the several counties of the state shall be assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellow-

stone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56; any new counties shall be assigned numbers by the registrar of motor vehicles as they may be formed, beginning with the number 57.

**History:** En. Sec. 3, Ch. 75, L. 1917; re-en. Sec. 1757, R. C. M. 1921; amd. Sec. 2, Ch. 158, L. 1933; amd. Sec. 1, Ch. 6, L. 1941; amd. Sec. 3, Ch. 88, L. 1943; amd. Sec. 1, Ch. 111, L. 1951; amd. Sec. 1, Ch. 29, L. 1953; amd. Sec. 1, Ch. 245, L. 1955; amd. Sec. 1, Ch. 236, L. 1957; amd. Sec. 1, Ch. 245, L. 1959; amd. Sec. 1, Ch. 245, L. 1965; amd. Sec. 1, Ch. 41, L. 1967; amd. Sec. 5, Ch. 127, L. 1969; amd. Sec. 1, Ch. 226, L. 1971.

#### Amendments

The 1965 amendment substituted the second, third, and fourth sentences of subsection (2) for "Such registration plate and the required serial numbers and letters thereon, shall be of sufficient size and spacing to be plainly readable from a distance of 100 feet during daylight. The registrar shall, in his discretion, choose to select permanent number or identification plates with a yearly insert plate or tab bearing the last two numbers of the year for which such license is issued and such insert plate or tab shall be serially numbered in the same manner as the numbered plates, and such permanent number or identification plates shall be made in such form and of such materials as the registrar shall determine; provided further, that the registrar may, in his discretion, designate number or identification plates for any year as the proper means of identifying the vehicle for a subsequent year or years, said plates to be validated by a windshield sticker of such size, color and design and displayed as he shall direct; such sticker shall bear a distinctive number and the registration period for which it is issued, after which period it shall be unlawful to further display same on the vehicle."

The 1967 amendment substituted "issued every other year" for "renewed annually," and deleted "each year" after

"marking" in the third sentence of subsection (1); added the fourth sentence of subsection (1); deleted "and the required serial numbers and letters thereon" after "registration plate" and "or numerals and border" after "material" in the second sentence of subsection (2); substituted "motor vehicle recording account of the earmarked revenue fund. Disbursements from the motor vehicle recording account shall be made by warrant drawn by the registrar" for "general fund of the state of Montana" in the third sentence of subsection (2); and added "and housetrailer" after "trailers" at the end of the first sentence of subsection (4).

The 1969 amendment added the second paragraph in subsection (4).

The 1971 amendment inserted in the second sentence of subsection (1) the provision for distinctive letters for plates issued to dealers in vehicles of the motorcycle type; inserted "provided that number plates will next be issued in the year 1973 and in alternate years thereafter" in the third sentence of subsection (1); added at the end of the first paragraph of subsection (4) the provision for distinctive letters for plates assigned to vehicles of the motorcycle type; inserted references to vehicles of the motorcycle type in two places in the second paragraph of subsection (4); and made minor changes in phraseology and punctuation.

#### Effective Date

Section 2 of Ch. 41, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 16, 1967.

#### Cross-References

Warden to continue to provide license plates, sec. 82A-1205(1).

**53-106.1. Registration of motor vehicles owned and operated solely as collectors' items—number plates for such motor vehicles.** Any owner of a motor vehicle manufactured in 1933 or earlier or manufactured in



1934 or later and is more than thirty (30) years old, used solely as a collectors' item and not for general transportation purposes, may file with the registrar of motor vehicles an application for the registration of such motor vehicle stating the name and address of the owner, the name and address of the person from whom purchased, the make of the motor vehicle, the gross weight thereof, the year and number of the model, and the manufacturer's identification number and serial number, and setting forth a specific statement that the vehicle is owned and operated solely as a collectors' item and not for general transportation purposes; and said application shall be sworn to before an officer authorized to administer oaths. The registration fee for all such motor vehicles weighing twenty-eight hundred and fifty (2850) pounds or less shall be five dollars (\$5.00), and the registration fee for all such motor vehicles weighing more than twenty-eight hundred and fifty (2850) pounds shall be ten dollars (\$10.00).

Upon receipt of said application for registration and payment of the registration fee above provided for the registrar shall file said application and register the motor vehicle therein described in the manner specified in section 53-101, and shall deliver to the applicant:

(1) for motor vehicles manufactured in 1933 or earlier, two (2) license plates bearing the inscription, "Pioneer—Montana" and the registration number; or

(2) for motor vehicles manufactured in 1934 or later and more than thirty (30) years old, two (2) license plates bearing the inscription, "Vintage—Montana" and the registration number. The year of issuance shall not be shown on the plates. No annual renewal of the registration of any such motor vehicle shall be required, and the same shall be valid as long as the vehicle is in existence; provided, however, that upon any sale of such motor vehicle, the purchaser shall be required to renew the registration thereof and pay the license fees hereinbefore specified.

**History:** En. 53-106.1 by Sec. 1, Ch. 123, L. 1955; amd. Sec. 1, Ch. 86, L. 1963; amd. Sec. 1, Ch. 422, L. 1973.

#### Amendments

The 1963 amendment substituted "thirty (30) years prior to the year 1963" in the first part of the first paragraph for "thirty (30) years prior to the date of the application referred to hereunder."

The 1973 amendment substituted "manufactured in 1933 or earlier" in the first sentence of the first paragraph for "manufactured more than thirty (30)

years prior to the year 1963"; inserted "or manufactured in 1934 or later and is more than thirty (30) years old" in the first sentence of the first paragraph; inserted "used" before "solely as a collectors' item" in the first sentence of the first paragraph; divided the first sentence of the second paragraph into the preliminary sentence, clause (1) and the sentence following clause (2); inserted "for motor vehicles manufactured in 1933 or earlier" at the beginning of clause (1); inserted clause (2) in the second paragraph; and made minor changes in style.

**53-106.6. Special plates—how affixed to car—sale or transfer of auto—revocation or expiration of radio license.** The lettered license plates, as herein provided, are to replace the regular license plates on the motor vehicle owned by said amateur radio licensee for such period of time as the amateur radio license is in force under the federal communications commission and the special license issued hereunder is in force, but no longer. Whenever such official amateur radio license is revoked or

expires for whatever reason, such license plate shall be removed immediately by the owner of the motor vehicle and the regular plates again placed or mounted on the motor vehicle as in other cases. When the motor vehicle is sold or otherwise transferred, the owner and holder of valid official amateur radio station and operator's license shall have the right to transfer the lettered plates to another motor vehicle owned by him upon such reasonable conditions as may be prescribed by the registrar. On the revocation or expiration of the amateur radio station and operator's licenses, the lettered license plates as issued shall be returned and surrendered to the registrar of motor vehicles.

**History:** En. Sec. 5, Ch. 2, L. 1957; amd. Sec. 4, Ch. 62, L. 1959; amd. Sec. 6, Ch. 127, L. 1969.

ment that "the regular number plates shall be mounted on the motor vehicle" upon the transfer or sale of a motor vehicle.

#### **Amendments**

The 1969 amendment deleted a require-

**53-106.7. Distinctive plates for national guardsmen.** In addition to the regular license plates prescribed by law, there may be issued to each active member of the Montana national guard, distinctive license plates, bearing the words "national guard" and "Montana," said plates to be numbered in sets of two with a different number following the letters "NG." Plates shall be furnished by the registrar of motor vehicles to the adjutant general, and by him, issued to the members of the active guard. The adjutant general shall inform the said registrar of each set so issued, giving the number of the license, the name, unit and home address of the member to whom issued, and shall be responsible for the recovery of said plates and notification to the registrar upon the member becoming ineligible to use them. Plates so issued shall be placed or mounted on the vehicle over the regular license plate, and shall be removed upon sale or other disposition of the vehicle. Said distinctive plates shall be renewed every five (5) years or when lost, destroyed or damaged.

**History:** En. Sec. 1, Ch. 135, L. 1955; amd. Sec. 1, Ch. 114, L. 1967.

#### **Title of Act**

An act to provide for distinctive license plates for motor vehicles owned by active members of the Montana national guard.

#### **Amendments**

The 1967 amendment substituted "every five (5) years or when lost, destroyed or damaged" for "concurrently with the issuance of the regular motor vehicle license plates" at the end of this section.

**53-106.8. Free license plates to disabled veterans.** Any person who is a veteran of the armed service of the United States and permanently and totally disabled because of an injury which has been determined by the veterans administration to be service connected, and who is a citizen and resident of the state of Montana, and who is the owner of an automobile, shall be provided with free license plates upon payment of personal property tax equal to one per cent (1%) of the taxable value for the automobile upon proof of permanent and total service connected disability.

**History:** En. Sec. 1, Ch. 215, L. 1971.

#### **Title of Act**

An act to provide free license plates to

permanently and totally disabled veterans of the armed forces of the United States whose disability is service connected.

53-106.9. Nontransferability of disabled veterans' free license plates. The license issued pursuant to this act shall not be transferable.

History: En. Sec. 2, Ch. 215, L. 1971.

53-106.10. Veterans' free plates limited to one automobile. No disabled veteran shall be entitled to free license plates for more than one automobile.

History: En. Sec. 3, Ch. 215, L. 1971.

53-106.11. Violations of act or wrongfully attempting to secure veterans' free plates a misdemeanor—penalties. Any person who violates this act or who knowingly and wrongfully attempts to secure free license plates under this act shall be guilty of a misdemeanor and punished by a fine of not less than one hundred dollars (\$100) or imprisonment for not more than thirty (30) days or both.

History: En. Sec. 4, Ch. 215, L. 1971.

53-107. (1758) Certificates of registration and ownership—contents, issuance, entry, assignment of numbers—owner's registration receipt to be signed, carried and exhibited on demand. Upon completion of the application for registration, on forms furnished by the registrar of motor vehicles, the county treasurer shall issue to the applicant two (2) copies of the application marked "Owner's Certificate of Registration and Tax Receipt," one (1) of which shall be marked "File copy," and forward one (1) copy of the application to the registrar of motor vehicles who shall cause to be entered the information contained in said application upon the corresponding records of his office and shall furnish the applicant a certificate of ownership subject to the provisions of section 53-110. Said certificate of registration and ownership shall meet the following requirements:

The certificate of registration and the certificate of ownership shall each contain upon the face thereof: (1) the date issued, (2) the registration number assigned to the owner and the vehicle, (3) the name and complete address of the owner and the name and complete address of any conditional sales vendor, and also the name and address of any other lienor as shown by said application, (4) a description of the registered vehicle including the year built and serial number, if any, (5) any lien against such motor vehicle and the amount due at the date of registration, and such other statement of facts as may be determined by the registrar.

Upon receipt of the application the registrar shall make a recheck of the application and in the event that there is any error in the application it may be returned to the county treasurer to effectively secure the correction of such error, who shall return the same to the registrar of motor vehicles.

The certificate of ownership shall contain a form of notice to the registrar of a transfer of title or interest of the owner and such other statement on forms as may be determined by the registrar.



File copy of owner's certificate of registration receipt to be signed, carried, and exhibited on demand. Every owner, upon receiving a registration receipt shall write his signature thereon with pen and ink in the space provided. Every such registration receipt or a notarized photostatic copy thereof or a duplicate thereof furnished by the registrar of motor vehicles shall at all times be carried in the vehicle, to which it refers or shall be carried by the person driving or in control of such vehicle, who shall display the same upon demand of a police officer or any officer or employee of the registrar of motor vehicles or the highway department.

The term "motor vehicle" includes automobile, truck, motorcycle-type vehicle, and semitrailer, trailer and trailer-house.

Any trailer, semitrailer or trailer-house which does not have a manufacturer's or other identifying number thereon shall be assigned an identification number by the registrar upon registration of such motor vehicle. The owner or other person lawfully in possession of such motor vehicle shall stamp such number so assigned by the registrar upon the principal right frame member of said motor vehicle near the front end thereof where it may be clearly and readily seen, and said stamping shall be promptly accomplished after notice of the assigned number by the registrar. The registrar may withhold registration until satisfactory proof by affidavit, of such stamping is filed with him.

Any person violating this section shall be deemed guilty of a misdemeanor and shall be punished by a fine of not exceeding twenty-five dollars (\$25.00).

**History:** En. Sec. 4, Ch. 75, L. 1917; re-en. Sec. 1758, R. C. M. 1921; amd. Sec. 2, Ch. 159, L. 1933; amd. Sec. 5, Ch. 72, L. 1937; amd. Sec. 1, Ch. 148, L. 1943; amd. Sec. 1, Ch. 63, L. 1945; amd. Sec. 1, Ch. 115, L. 1953; amd. Sec. 1, Ch. 200, L. 1955; amd. Sec. 1, Ch. 139, L. 1961; amd. Sec. 7, Ch. 127, L. 1969; amd. Sec. 1, Ch. 179, L. 1971.

#### Amendments

The 1969 amendment deleted exceptions relating to the owners of passenger cars, pickups and farm trucks in the fifth paragraph of the section.

The 1971 amendment deleted "in quintuplet" after "application for registration" near the beginning of the section; substituted "subject to the provisions of section 53-110" at the end of the first sentence of the first paragraph for "and said owner shall at all times retain possession of the certificate of ownership, except when the same is being transmitted to and from the registrar of motor vehicles for endorsement or cancellation. In the event the said certificate of ownership be in the pos-

session or under the control of any person other than the person entitled to operate and possess the motor vehicle the same must be surrendered to the person entitled to operate and possess such motor vehicle, upon demand, and refusal shall constitute a misdemeanor. At the same time, he shall issue to any conditional sales vendor, or other person holding the legal title to the vehicle, or any mortgagee thereof, or any other lien holder, a statement of the filing of such conditional sales contract, mortgage or other lien"; deleted "The reverse side of" at the beginning of the fourth paragraph; substituted "motorcycle-type vehicle" for "motorcycle" in the sixth paragraph; and made minor changes in style.

#### Cross-References

Registrar's position abolished and functions transferred, sec. 82A-1205 (1).

#### References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

**53-108. (1758.1) Renewal of registration.** Every vehicle registration under this act shall expire on December thirty-first of each year and

shall be renewed annually upon application and payment of license fees, as provided in sections 53-114 and 53-122, such renewal to take effect on the first day of January of each year. The certificate of registration issued hereunder shall be valid during the registration year only for which issued, and the certificates of ownership shall remain valid until canceled by the registrar of motor vehicles upon a transfer of any interest shown therein and need not be renewed annually.

The owner of a vehicle registered under the provisions of this act shall be entitled to operate such vehicles between January first and February fifteenth without displaying the registration certificate of the current year, on condition that such owner shall, during said period, display upon such vehicle the number plates or plate assigned thereto for the previous year.

**History:** En. Subd. 2, Sec. 2, Ch. 159, L. 1933; amd. Sec. 1, Ch. 244, L. 1955; amd. Sec. 1, Ch. 146, L. 1957; amd. Sec. 1, Ch. 100, L. 1959; amd. Sec. 25, Ch. 121, L. 1965; amd. Sec. 1, Ch. 116, L. 1969; amd. Sec. 8, Ch. 127, L. 1969; amd. Sec. 1, Ch. 138, L. 1971; amd. Sec. 2, Ch. 214, L. 1971.

#### Compiler's Notes

This section was amended twice in 1971, once by Ch. 138 and once by Ch. 214. Neither amendatory act mentioned nor incorporated the changes made by the other. Since the two amendatory acts do not appear to conflict, the compiler has made a composite section incorporating the changes made by both.

#### Amendments

The 1965 amendment increased the fee for temporary windshield stickers provided for by the former third paragraph from \$1.00 to \$2.00; and substituted "registrar of motor vehicles" for "board" in two places in the same paragraph.

Chapter 116, Laws of 1969, deleted language restricting the application of the former third paragraph to purchasers from licensed dealers; and extended the

life of the temporary windshield stickers from 30 days to 60 days.

Chapter 127, Laws of 1969, deleted from the former third paragraph language requiring display of the previous year's number plates with the temporary windshield sticker; extended the grace period for application for registration from three days to ten days; and made the grace period applicable to used as well as new vehicles.

Chapter 138, Laws of 1971, deleted the former third paragraph providing for temporary windshield stickers.

Chapter 214, Laws of 1971, deleted from the first paragraph a final sentence reading "Upon annual renewal, whenever the legal owner of the vehicle is other than the registered owner, the registrar of motor vehicles shall immediately notify such legal owner by mail of the registration number assigned to such vehicle for the ensuing year"; and made minor changes in punctuation and style.

#### References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

**53-109. (1758.2) Transfer of title or interest. (a) \* \* \*** [Same as parent volume.]

(b) Within ten (10) days thereafter, the transferee shall forward both the certificate of ownership so endorsed and the certificate of registration, together with the information required under section 53-107, to the county treasurer, who shall forward the same to the registrar and no certificate of ownership and certificate of registration shall be issued by the registrar of motor vehicles until the outstanding certificates are surrendered to that office or their loss established to his reasonable satisfaction. Failure to make such application within the time provided herein shall subject the transferee to a penalty of ten dollars (\$10) plus one dollar (\$1) for each additional day in which said vehicle remains unregis-

tered, not to exceed twenty-five dollars (\$25), said penalty to be collected by the county treasurer at the time of registration, and in addition to the fees otherwise provided by law.

(c) In the event of a transfer by operation of law of any title or interest of an owner of the legal title or owner in and to a motor vehicle as upon inheritance, devise or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in the performance of the terms of a lease or executory sales contract, or otherwise than by voluntary act of the person whose title or interest is so transferred, the executor, administrator, receiver, trustee, sheriff or other representative or successor in interest of the person whose title or interest is so transferred shall forward to the registrar of motor vehicles an application for registration in the form required for an original application for registration, together with a verified or certified statement of the transfer of such title or interest which statement shall set forth the reason for such involuntary transfer, the title or interest so transferred, the name or names of the person or persons to whom such title or interest is to be transferred, the process of procedure effecting such transfer and such other information as may be requested by the registrar and with such statement shall be furnished such evidence and instruments as may otherwise be required by law to effect a transfer of legal or equitable title to or an interest in chattels as may be required in such cases, and in the event the registrar shall be satisfied that such transfer is regular and that all formalities as required by law have been complied with, he shall cause to be sent to the owner, conditional sales vendors, lessors, mortgagees and other lienors, as shown by his records notice of such intended transfer and thereafter, but not less than five (5) days thereafter, shall register such motor vehicle and shall issue a new certificate of ownership and certificate of registration to the person or persons entitled thereto. The notice herein required shall be deemed complied with by deposit in the post office in Deer Lodge, Montana, such notice postage prepaid, addressed to such person or persons at the respective addresses shown on his records.

When the vehicle title that is involuntarily transferred is not registered in this state the procedure set forth above must be followed in applying for a new certificate of ownership and certificate of registration, but the registrar need not send notice of intended transfer and shall issue a new certificate of ownership and a new certificate of registration to the person entitled thereto.

In the event of the death of an owner of one or more motor vehicles and/or trailer, and/or semitrailer, and/or trailer-house registered hereunder and not exceeding the value of four thousand dollars (\$4,000), without leaving other property necessitating the procuring of letters of administration or letters testamentary, then the surviving husband or wife, or other heir, unless such property is by will otherwise bequeathed, may secure transfer of the certificate of ownership and the certificate of registration of the deceased, in and to such motor vehicle in the name of the surviving husband or wife or other heir, as above mentioned, upon filing with the registrar an affidavit of such person setting forth the fact



of survivorship and the name and address of any other heirs and such other facts as are hereby made necessary to entitle the affiant to a transfer and thereupon the registrar is authorized to make such transfer of the certificate of ownership and certificate of registration, subject to all contracts, leases, mortgages, or other liens as shown by his records.

Nothing in the foregoing subdivision of this section shall prevent any conditional sales vendor, mortgagee, or other lienor from assigning his interest or title in or to a motor vehicle registered under the provisions of this act to any other person without the consent of and without effecting the interest of the holder of the certificate of ownership and certificate of registration. Upon any conditional sales vendor, mortgagee, or other lienor assigning his interest in any motor vehicle registered under this act a copy of such assignment must be filed with the registrar and record thereof made upon his records.

(d) Every person who transfers any motor vehicle to a junk dealer for the purpose of scrapping said vehicle shall so notify the registrar and deliver the certificate of ownership and certificate of registration to the registrar for cancellation.

**History:** En. Subd. 3, Sec. 2, Ch. 159, L. 1933; amd. Sec. 6, Ch. 72, L. 1937; amd. Sec. 2, Ch. 148, L. 1943; amd. Sec. 2, Ch. 63, L. 1945; amd. Sec. 1, Ch. 191, L. 1967; amd. Sec. 1, Ch. 213, L. 1969; amd. Sec. 2, Ch. 138, L. 1971.

#### Amendments

The 1967 amendment deleted "registered under the provisions of this act" after "motor vehicle" near the beginning of the first paragraph of former subsection (e), now subsection (c); and inserted the present second paragraph in former subsection (e), now subsection (c).

The 1969 amendment increased the

maximum value specified in the third paragraph of former subsection (e), now subsection (c), from \$1,000 to \$4,000.

The 1971 amendment substituted "county treasurer, who shall forward the same to the registrar" in the first sentence of subsection (b) for "registrar, who shall file the same upon receipt thereof"; added the second sentence to subsection (b); deleted former subsections (c) and (d); and redesignated former subsections (e) and (f) as (c) and (d), respectively.

#### References

Interstate Mfg. Co. v. Interstate Products Co., 146 M 449, 408 P 2d 478.

**53-109.1. Used motor vehicles—transfer to and from dealers.** The provisions of subdivision (b) of section 53-109 shall not apply in the event of the transfer of a motor vehicle to a duly licensed automobile dealer intending to resell such vehicle and who operates the same only for demonstration purposes. In such cases, the dealer shall not be required to make application for a new certificate of ownership or for registration during the period of his ownership of said vehicle, but upon his transfer of ownership thereof to a person other than a licensed motor vehicle dealer, the following acts shall be required of the dealer on or before the times herein set forth:

(1) Prior to his delivery of the vehicle to the purchaser, the dealer shall issue and affix to the rear window of said vehicle a sticker in form to be prescribed by the registrar, and containing the name and address of the purchaser, date of sale, name and address of the dealer, and a description of the vehicle, including its serial number. There shall be imprinted upon said sticker in bold letters the following statement: "IT IS UNLAWFUL TO PLACE LICENSE PLATES UPON THIS VE-

HICLE UNTIL REGISTERED AT THE OFFICE OF THE COUNTY TREASURER." One copy of said sticker shall be delivered by the dealer to the county treasurer in the manner prescribed in subsection (2) hereof, and a copy shall be retained by the dealer for his file.

(2) Within three (3) days following the date of delivery of said vehicle, the dealer shall forward to the county treasurer of the county where the purchaser resides, the certificate of ownership and certificate of registration (if the same are then in his possession), with an application for registration executed by the new owner in accordance with the provisions of section 53-107, and a copy of the sticker affixed to said vehicle by the dealer, and the registrar, upon receipt of said documents from the county treasurer, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership and certificate of registration together with a statement of any conditional sales contract, mortgage, or other lien as provided in said section 53-107. Transmission of said documents by the dealer to the county treasurer may be accomplished either by personal delivery or by first class mail, in which event they shall be deemed to have been delivered at the time of mailing.

(3) If the dealer is unable to forward the certificate of ownership and/or certificate of registration within the time set forth in subsection (2) hereof, because the same are lost, are in the possession of third parties, or are in process of reissuance in this state or elsewhere, he shall comply in all other respects with the provisions of said subdivision (2) and shall forward the missing document or documents to the county treasurer, either personally or by first class mail, within three (3) days after their receipt.

Upon compliance by the dealer with the requirements set forth in this section, title to said motor vehicle shall be deemed to have passed to the purchaser as of the date of the delivery of said vehicle to him by the dealer, and the dealer shall have no further liability or responsibility with respect to the processing of registration.

**History:** En. Sec. 3, Ch. 138, L. 1971.

#### **Title of Act**

An act to provide for the issuance by licensed motor vehicle dealers of stickers to be affixed to the rear window of new and used vehicles purchased from such dealers, to remain thereon during the ten day grace period for making application for registration of such vehicle; providing a nonregistration penalty; requiring that in cases of sales of used motor vehicles to persons other than licensed dealers, the dealer forward to the county treasurer, either personally or by first class mail,

within three days following delivery of the vehicle, the certificate of ownership and certificate of registration with an application for registration executed by the new owner, and a copy of the sticker affixed to said vehicle by the dealer; providing that in such cases and upon compliance by the dealer with such requirements, title to said motor vehicle shall be deemed to have passed to the purchaser as of the date of delivery of said vehicle; amending sections 53-108, 53-109, 53-146, and 53-147, Revised Codes of Montana, 1947; and repealing all acts and parts of acts in conflict herewith.

### **DECISIONS UNDER FORMER LAW**

#### **Attachment of Vehicle**

Where plaintiff assignee of vehicle had not recorded the title in her name even though she had possession of the vehicle

and endorsed documents of title, she was a stranger to the title under former subsection (d) of section 53-109 and had no standing to complain of a wrongful at-

tachment for the debt of the supposed owner, her former husband. *Ott v. Fidelity Finance Co.*, 158 M 91, 488 P 2d 1148.

#### Contract for Purchase

Where registrar never issued certificate of registration to purchaser of a vehicle, so that under former subsection (d) of section 53-109 title did not pass to the purchaser, a non-negotiable promissory note given by the purchaser was without consideration, therefore voidable against an assignee of the note. *Sonnek v. Universal C.I.T. Credit Corp.*, 140 M 503, 374 P 2d 105, 108.

#### Insurance Coverage

Where buyer of a vehicle had not executed an application for registration in his name and neither party had filed any documents relating to the transfer with the registrar of motor vehicles, title had not passed to the buyer even though the parties had agreed on the price and buyer had taken possession, so that liability from an accident while buyer was driving was covered by dealer-seller's insurance rather than by the owned-replacement clause of buyer's insurance. *Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co.*, 142 M 155, 382 P 2d 174, distinguished in 368 F 2d 405, 409 and in 329 F Supp 172, 175.

Where dealer-seller retained possession of the certificate of registration of a vehicle pending payment of the final installments of the purchase price, the title remained in the seller under the provisions of former subsection (d) of section 53-109, even though the vehicle had been delivered to buyer, and liability for an accident involving buyer's son's driving of the car was covered by the seller's insurance rather than by the 30-day automatic coverage for a new car under buyer's policy or by uninsured motorist coverage of injured parties. *Ostermiller v. Parker*, 152 M 337, 451 P 2d 515, explained in 323 F Supp 1164, 1173 and distinguished in 329 F Supp 172, 175.

Where none of the parties had taken any steps to have a new certificate of title issued to buyer of a vehicle, title remained in the dealer-seller under former subsection (d) of section 53-109, even though the vehicle and the executed documents of title had been delivered to the buyer by a third party non-dealer who had purchased from the dealer, and liability for an accident arising out of the buyer's brother's operation of the vehicle was covered by the insurance of the dealer and the third party, rather than by the insurance of the buyer. *Irion v. Glen Falls Ins. Co.*, 154 M 156, 461 P 2d 199, explained in 323 F Supp 1164, 1174 and distinguished in 329 F Supp 172, 175.

Where purchaser of vehicle had exercised complete dominion over a vehicle for over three years, had taken possession of the seller's certificate of registration, had purchased license plates for it in his own name for two years, had purchased insurance for it, and had repaired it, he was the owner of the vehicle for purposes of the non-owned clause of his insurance policy, despite the fact that there had been no compliance with section 53-109 and no certificate of registration had been issued to him as required by former subsection (d) of section 53-109. *National Farmers Union Property & Casualty Co. v. Colbrese*, 368 F 2d 405, reversing 227 F Supp 978, cert. den. 386 US 991, 87 S Ct 1306, questioned in 154 M 156, 461 P 2d 199, 205.

Where certificate of title had not been endorsed by dealer-seller and there had been no application for a certificate in buyer's name, the failure to meet the requirements of section 53-109 invalidated the sale under the terms of former subsection (d) of section 53-109, the seller was still legally in possession, and buyer was not excluded by an exclusion of persons to whom possession had been delivered pursuant to a contract of sale, despite the fact that the vehicle and the documents of title had been physically delivered to buyer, so dealer's insurance covered liability for an accident involving buyer's brother's operation of the vehicle. *Glen Falls Ins. Co. v. Irion*, 323 F Supp 1164.

Where buyer took possession of vehicle and executed application for certificate of title on Saturday and dealer-seller endorsed the old certificate and delivered the documents to the county treasurer on Monday, the next day of business for that office, the requirements of section 53-109 were met and title passed as of Saturday, despite former subsection (d) of section 53-109 and despite death of buyer later on Saturday, so that seller's insurance policy did not cover liability for accident arising out of operation of vehicle with buyer's consent occurring on Saturday after delivery of vehicle to buyer. *Phoenix Ins. Co. v. Newell*, 329 F Supp 172, distinguished in 343 F Supp 576, 581.

Where, at the time of an accident arising out of operation of the vehicle by buyer's employee, the vehicle had been delivered to buyer but buyer had not executed an application for certificate of title, the title had not passed under former subsection (d) of section 53-109, and the subsequent registration of the transfer could not cause the transfer to relate back to the time the vehicle was delivered to the buyer but only to the time that buyer executed an application for certifi-



cate of title; therefore, liability arising out of the accident was covered by seller's insurance. *American States Ins. Co. v. Angstman Motors, Inc.*, 343 F Supp 576.

**53-109.2. Applicability of sticker provisions to new car purchases.** The provisions of section 3 [53-109.1], subsection (1), pertaining to the issuance of a sticker by the dealer, placement thereof upon the rear windshield of the vehicle prior to delivery, and transmission of a copy of said sticker to the county treasurer, either personally or by first class mail within ten (10) days following delivery of said vehicle, shall be applicable to sales of new motor vehicles as well as to sales of used motor vehicles.

**History:** En. Sec. 4, Ch. 138, L. 1971.

**53-109.3. Temporary windshield sticker.** Any purchaser of a motor vehicle who is unable to obtain license plates from the county treasurer at the time he makes application for registration or reregistration of said vehicle, because the certificate of ownership is lost, in the possession of third parties, or in the process of reissuance in this state or elsewhere, may, upon making affidavit to that effect upon a form prescribed by the registrar and upon the payment of a fee of two dollars (\$2) to be collected by the county treasurer and remitted to the registrar, obtain from the county treasurer of the county in which said vehicle is subject to tax, a temporary windshield sticker of such size, color and design as the registrar may prescribe, to be validated by the county treasurer for a period of sixty (60) days from the date of issuance, and such purchaser, upon displaying such sticker on the lower right-hand corner of the windshield of such motor vehicle shall be entitled to operate such vehicle during the period for which such windshield sticker has been validated without displaying the registration certificate or number plates or plate for the current year. Provided, however, the county treasurer shall not sell, and no person shall purchase, more than one (1) sixty (60) day temporary windshield sticker for any vehicle, the ownership of which has not changed since the issuance of the previous sixty (60) day windshield sticker.

**History:** En. Sec. 5, Ch. 138, L. 1971.

**53-109.4. Grace period—penalty.** Any purchaser of a new or used motor vehicle from a duly licensed motor vehicle dealer shall have the grace period of ten (10) days from the date of purchase to make application for registration and to obtain registration plates, and it shall not be a violation of this chapter or any other law for such purchaser to operate such vehicle upon the streets and highways of this state without a certificate or registration and registration plates during the said ten (10) day period; provided that at all times during said period the sticker issued by the dealer at the time of purchase shall remain affixed to said vehicle as provided in section 3 [53-109.1]. Failure to make such application within the time provided herein shall subject the purchaser to a penalty of ten dollars (\$10), plus one dollar (\$1) for each additional day in which said vehicle remains unregistered, not to exceed twenty-five dollars (\$25), said penalty to be collected by the county treasurer at the

time of registration, and in addition to the fees otherwise provided by law.

**History:** En. Sec. 8, Ch. 138, L. 1971. repealed all acts and parts of acts in conflict therewith.

**Repealing Clause**

Section 9 of Ch. 138, Laws 1971 re-

**53-110. (1758.3) Filing of liens, rights, procedure, fees. (a). \* \* \***  
[Same as parent volume.]

(b) Satisfaction or statements of release filed with the registrar of motor vehicles under this act shall be retained by him for a period of eight (8) years after receipt, after which they may be destroyed. Chattel mortgages, conditional sales contracts, leases, or other liens filed with the registrar, and all renewals and assignments thereof, shall be retained by him for a period of eight (8) years after the maturity date stated in such mortgage, conditional sales contract, lease, or other lien, or renewal, or if no maturity date is therein stated, for a period of thirteen (13) years after receipt, after which they may be destroyed.

(c) From and after the filing of any mortgage, conditional sales contract, lease, or other lien, or copy thereof on any motor vehicle, as herein provided, then and in that event such mortgage, conditional sales contract, lease or other lien shall be constructive notice of the said mortgage, conditional sales contract, lease or other lien and its contents to subsequent purchasers and encumbrancers.

(d) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle the mortgagee or vendor has the same remedies as in the case of other personal property, except that the remedy of seizure prescribed by section 52-312 shall be available upon delivery to the sheriff of the original instrument or a copy certified by the registrar of motor vehicles and such undertaking as may be required by the sheriff. In case of attachment of motor vehicles all the provisions of section 93-4338 shall be applicable except that deposits must be made with the registrar of motor vehicles.

(e) In the event any conditional sales vendor or assignee or chattel mortgagee or assignee fails to file a satisfaction of a chattel mortgage, assignment or conditional sales contract within fifteen days after receiving final payment on such mortgage, assignment, or conditional sales contract he shall be required to pay the registrar of motor vehicles the sum of one dollar (\$1.00) for each and every day thereafter that he fails to file such satisfaction.

(f) and (g). \* \* \* [Same as parent volume.]

(h) A fee of two dollars (\$2.00) shall be paid to the registrar of motor vehicles upon and for filing any lien or lien instrument against any motor vehicle, and said fee of two dollars (\$2.00) shall further include and cover the cost of filing a satisfaction or release of the lien or lien instrument, and, also, the cost of endorsing such satisfaction or release on the face of the certificate of ownership or on the records of the registrar, or both. A fee of two dollars (\$2.00) shall be paid the registrar of motor vehicles for issuing a certified copy of a chattel mortgage, conditional sales contract or other lien, or instrument of encumbrance on file in

the office of the registrar, or for filing any assignment of any instrument on file with the registrar. All fees provided for in this section shall be deposited by the registrar in the earmarked revenue fund.

**History:** En. Subd. 4, Sec. 2, Ch. 159, L. 1933; amd. Sec. 7, Ch. 72, L. 1937; amd. Sec. 3, Ch. 148, L. 1943; amd. Sec. 3, Ch. 63, L. 1945; amd. Sec. 11-143, Ch. 264, L. 1963; amd. Sec. 26, Ch. 121, L. 1965.

#### Amendments

The 1963 amendment completely re-wrote subsection (b), for previous text of which see parent volume; inserted "or conditional sales contract" near the beginning of subsection (d); substituted "mortgagee or vendor has the same remedies as in the case of other personal property, except that the remedy of seizure prescribed by section 52-312 shall be available" in subsection (d) for "mortgagee may foreclose his mortgage as in the case of other personal property, and upon default under a conditional sales contract covering a motor vehicle the vendor shall have the remedies prescribed by section 74-207"; substituted the reference to section 93-4338 in the latter part of subsection (d) for a reference to section 52-309; deleted the words "instead of the county treasurer" from the end of subsection (d); and made minor changes in phraseology and punctuation in subsection (d).

**53-112. (1758.4) Fee for original certificate of ownership and transfer of title.** A charge of two dollars (\$2.00) shall be made for issuance of an original certificate of ownership of title and for a transfer of registration which shall be collected by the county treasurer. The fees shall be distributed as follows:

(a) One dollar (\$1.00) of each fee shall be remitted to the registrar of motor vehicles by the county treasurer with each application for original certificate of ownership or transfer of registration.

(b) Prior to March 1, 1966 and each March thereafter, the county commissioners of each county shall divide the fees retained by the county to

(i) the city road fund of each city and town within the county based on the number of motor vehicles registered inside the corporate limits of each city or town, and

(ii) the county road fund based on the number of motor vehicles registered outside the corporate limits of cities and towns.

**History:** En. Subd. 5, Sec. 2, Ch. 159, L. 1933; amd. Sec. 8, Ch. 72, L. 1937; amd. Sec. 27, Ch. 121, L. 1965.

#### Amendment

The 1965 amendment increased the fee specified in the first sentence from \$1.00 to \$2.00; inserted "and for a transfer of registration" in the first sentence; deleted

The 1965 amendment deleted from the end of subsection (e) a sentence reading "All moneys paid to the registrar of motor vehicles under this section shall revert to the automobile theft fund"; increased the fees in subsection (h) for filing liens and releases from \$1.00 to \$2.00, for certified copies from 50¢ to \$2.00, and for filing assignments from 50¢ to \$2.00; and added the last sentence to subsection (h).

#### Notice of Agister's Lien

Failure of automobile repairman to file copy of asserted agister's lien with registrar of motor vehicles as required by subsection (a) rendered that lien invalid as against bank holding recorded security interest in vehicle repaired and those seizing vehicle in its behalf. *Parker v. West*, — M —, 505 P 2d 94.

#### Notice of Prior Interest

Where auto repairman failed to ascertain true ownership of auto before making repairs, the filing of conditional sales contract with the registrar of motor vehicles by assignee prior to repairman's lien established a dominant interest under subsection (c) of this section. *Williamson v. Skerritt*, 141 M 422, 378 P 2d 215.

"for the registrar of motor vehicles the first time any vehicle is registered by any owner" from the end of the first sentence; and substituted the second sentence and paragraphs (a) and (b), including subparagraphs (i) and (ii), for sentences reading, "Said charge of one dollar (\$1.00) shall be remitted to the registrar of motor vehicles by the county



treasurer with each application for registration. Upon a transfer of registration by the owner, there shall be forwarded to the registrar of motor vehicles, the certificate of ownership or title and registration card,

properly filled out and executed, together with a transfer fee of one dollar (\$1.00)."

#### Cross-References

Junk vehicle disposal fees payable on title certificates and transfers, sec. 69-6807.

**53-113. (1758.5) Lost certificates.** In the event any certificate of registration or ownership shall be lost, mutilated or become illegible, the person to whom the same shall have been issued shall immediately make application for and may obtain a duplicate thereof, upon furnishing satisfactory information to the registrar of such facts and upon payment of a fee of two dollars (\$2.00).

**History:** En. Subd. 6, Sec. 2, Ch. 159, L. 1933; amd. Sec. 1, Ch. 96, L. 1953; amd. Sec. 28, Ch. 121, L. 1965.

#### Amendment

The 1965 amendment increased the fee specified at the end of the section from \$1.00 to \$2.00.

**53-114. (1759) Application for registration of motor vehicles and payment of license fees thereon—assessment of motor vehicles in the stock of licensed motor vehicle dealers as merchandise.** (1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall, for each motor vehicle owned, except as herein otherwise expressly provided, file, or cause to be filed, in the office of the county treasurer wherein such motor vehicle is owned or taxable, an application for registration, or reregistration, upon blank form to be prepared and furnished by the registrar of motor vehicles, which application shall contain:

(a) and (b). \* \* \* [Same as parent volume.]

(c) Description of motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, type of body and, if truck, the rated capacity.

(d) and (e). \* \* \* [Same as parent volume.]

(2) Whoever files an application for registration or reregistration of a motor vehicle except of a mobile home as defined in section 84-101, R. C. M., 1947, shall before filing such application with the county treasurer submit the same to the county assessor of said county and said county assessor shall enter on said application in a space to be provided for that purpose, the full and true and the assessed valuation of said vehicle for the year for which said application for registration is made.

(3) Whoever files an application for registration or reregistration of a motor vehicle except of a mobile home as defined in section 84-101, R.C.M., 1947, shall upon the filing of said application (1) pay to the county treasurer the registration fee, as provided in section 53-122 and section 53-115, and shall also at such time (2) pay the personal property taxes assessed or the new motor vehicle sales tax against said vehicle for the current year of registration (unless the same shall have been theretofore paid for said year) before the application for registration or reregistration may be accepted by the county treasurer. The county treasurer is hereby empowered to make full and complete investigation of the tax status of said vehicle and any applicant for registration or reregistration must

submit proof with respect thereto from the tax records of the proper county at the request of the county treasurer.

(4) The amount of taxes on said motor vehicle, except a mobile home as defined in section 84-101, R. C. M., 1947, shall be computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or reregistration and such determination shall be entered on the application form in a space provided therefor.

(5) Motor vehicles, except mobile homes as defined in section 84-101, R.C.M., 1947, are hereby declared to be assessable for taxation as of and on the first day of January in each year irrespective of the time fixed by law for the assessment of other classes of personal property, and irrespective of whether or not the levy and tax may be a lien upon real property within the state of Montana, provided that in no event shall any motor vehicle be subject to assessment, levy and taxation more than once in each year.

(6) The applicant for original registration of any wholly new and unused motor vehicle except a mobile home as defined in section 84-101, R.C.M., 1947, acquired by original contract after the first day of January of any year shall be required, whenever such vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by section 32-3315, R.C.M., 1947, irrespective of whether or not such vehicle was in the state of Montana on the first day of January of such year.

(7) Upon accepting application for registration or reregistration of any motor vehicle which is subject to taxation in this state on January 1 in any year, and upon payment of taxes, the county treasurer shall stamp on said application: "taxes on this vehicle due January 1 of current year paid by applicant, prior applicant or owner and this vehicle is eligible for registration."

Upon accepting application for registration of any motor vehicle which was not subject to taxation in this state on January 1st in any year, the county treasurer shall indicate such fact by proper entry on said application.

(8) The registrar of motor vehicles shall have authority to make proper entry on any certificate of title to any motor vehicle respecting payment of taxes in accord with the facts.

History: En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R. C. M. 1921; amd. by repeal Subd. 4, Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963; amd. Sec. 1, Ch. 290, L. 1967; amd. Sec. 9, Ch. 296, L. 1967; amd. Sec. 3, Ch. 214, L. 1971.

#### Amendments

The 1963 amendment deleted the words "except as hereinafter provided" which followed "Motor vehicles" at the begin-

ning of subsection (5); deleted from the end of subsection (5) a proviso reading, "and provided, further, that new motor vehicles, and used motor vehicles which have not previously been assessed and licensed during the current year, when held for sale in the stock of any duly licensed motor vehicle dealer or used motor vehicle dealer, are hereby declared to be merchandise and shall be assessed as of the first Monday in March in each year in the same manner as other stocks of merchandise"; and deleted from the end of the second paragraph of subsection (7) a clause reading, "and in case such motor vehicle shall have been assessed for taxation as a part of the stock of merchandise

of a licensed dealer, the county treasurer shall indicate such fact by proper entry on said application, and the applicant for registration shall not be required to pay the personal property tax on any motor vehicle so assessed as merchandise."

Chapter 290, Laws of 1967, inserted "or the new motor vehicle sales tax" after "taxes assessed" in the first sentence of subdivision (3).

Chapter 296, Laws of 1967, in subsection (2), added "Whoever files an application for registration or reregistration of a motor vehicle except of a mobile home as defined in section 84-101, R. C. M. 1947, shall" at the beginning of the subsection and deleted "the applicant shall" before "submit the same"; in subsection (3), substituted "Whoever files an application for registration or reregistration of a motor vehicle except of a mobile home as defined in section 84-101, R. C. M. 1947, shall" for "The applicant shall" before "upon the filing of" at the beginning of the subsection; in subsection (4), inserted "except a mobile home as defined in section 84-101, R. C. M. 1947" after "said motor vehicle"; in subsection (5), inserted "except mobile homes as defined in section 84-101, R. C. M. 1947" after "Mobile vehicles" near the beginning of the subsection; in subsection (6), in-

serted "except a mobile home as defined in section 84-101, R. C. M. 1947" after "unused motor vehicle" and substituted "section 32-3315, R. C. M. 1947" for "section 53-617" after "tax provided by."

The 1971 amendment deleted "executed in quintuplet" near the end of the preliminary paragraph of subsection (1); substituted "engine or serial number" for "engine and serial number" in subdivision (1)(c); and made minor changes in punctuation and style.

#### Separability Clause

Section 10 of Ch. 296, Laws 1967 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

#### Cross-References

Registrar's position abolished and functions transferred, sec. 82A-1205 (1).

#### References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

**53-115. (1759.1) Time for making application.** Registration must be renewed annually and license fees paid annually. All registrations expire on December 31 of the year in which they are issued and application for registration, or reregistration, must be filed with the county treasurer as aforesaid not later than February 15 of each year. Provided, however, that in the event of transfer of a motor vehicle during the registration year, such motor vehicle shall be reregistered and relicensed as provided by statute.

**History:** En. Subd. 2, Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 51, L. 1967; amd. Sec. 9, Ch. 127, L. 1969.

#### Amendments

The 1967 amendment changed the late date for registration or reregistration from February 1 to February 15.

The 1969 amendment added the proviso.

**53-117. (1759.3) Disposition of taxes.** The county treasurer shall credit all taxes on motor vehicles so collected to a motor vehicle suspense fund and, at some time between March 1 and March 10 of each year, and every sixty (60) days thereafter, the county treasurer shall distribute the same in relative proportions required by the levies for state, county, school district and municipal purposes in the same manner as other personal property taxes are distributed.

**History:** En. Subd. 4, Sec. 1, Ch. 158, L. 1933; amd. Sec. 4, Ch. 72, L. 1937; amd. Sec. 1, Ch. 154, L. 1943; amd. Sec. 1, Ch. 200, L. 1945; amd. Sec. 29, Ch. 121, L. 1965.

#### Amendment

The 1965 amendment deleted from the end of the section sentences reading, "All motor vehicle license fees collected by the



county treasurer shall be credited to the motor vehicle license fund hereby established. The cost of making and delivering license plates and identification marks, certificates, and all other expense of operating the motor vehicle department of the state of Montana, shall be paid out of the motor vehicle recording fund (sometimes called the motor vehicle administrative fund); provided, however that each county

shall receive its pro rata share of any license fees, except dealer license fees, paid to the registrar of motor vehicles. The remainder in said county motor vehicle license fund shall be transferred by the county treasurer at the end of each month to the road fund of said county and shall be used by the county for the purpose set forth in section 53-122."

**53-118. (1759.4) Application for dealer's license.** Every person, firm, corporation, or association who, for commission or profit, engages in the business of buying, selling, exchanging or acting as a broker of new motor vehicles, used motor vehicles, trailers, (except trailers having an unladen weight of less than five hundred (500) pounds), semitrailers or special mobile equipment as defined in section 53-642 and qualifies under subparagraph (f) of this section, shall cause to be filed, by mail or otherwise, in the office of the registrar of motor vehicles, a verified application for licensing as a dealer on a blank to be furnished by the registrar of motor vehicles for that purpose, and containing the information therein required. The application and all of the information therein contained shall be verified by the Montana highway patrol. Each application must be accompanied by the license fee hereinafter named. Dealer's license must be renewed and paid for annually, and an application for relicensing must be filed not later than January first of each year. To qualify for licensing and the issuance and use of "D," "UD," "DTR," or "MCD" plates, as hereinafter provided, the applicant must furnish the following information and qualify under the following provisions:

- (a) The name under which the business is conducted;
- (b) Location of premises (street, address, city, county and state) where records are kept, sales are made and stock of motor vehicles displayed;
- (c) Name and address of all owners or persons having an interest in the business; provided, however, that in the case of a corporation, the names and addresses of the president and secretary thereof will be sufficient;
- (d) Name and make of all vehicles handled, if factory franchised or selling under a written agreement with a manufacturer, importer or distributor;
- (e) Whether or not used vehicles are handled exclusively;
- (f) A certificate to the effect that the applicant is a bona fide dealer in motor vehicles, trailers, semitrailers or special mobile equipment; and that the applicant if a dealer in new motor vehicles, is recognized by a manufacturer, importer or distributor as a dealer in particular makes of new motor vehicles.
- (g) Other information required by the registrar to efficiently administer this law.

The applicant for a dealer's license shall also file with his application a good and sufficient bond in the sum of five thousand dollars (\$5,000).

and the bond shall be conditioned that the applicant shall conduct his business in accordance with the requirements of the law. All bonds shall run to the state of Montana and shall be approved by the registrar of motor vehicles and filed in his office and shall be renewed annually.

The registrar of motor vehicles shall not register or license as a dealer any applicant for the sale of new motor vehicles at retail unless such applicant owns, leases or rents a permanent building wherein he shall conduct his business and who has a dealers' franchise from a manufacturer of motor vehicles. A private residence, tent, or temporary building is not a sufficiently permanent place of business within the meaning of this section. The registrar of motor vehicles shall not register or license any applicant as a dealer in used cars unless such applicant furnishes sufficient evidence to the registrar that he has a building or lot to provide display of merchandise, a sign indicating the firm name and headquarters as the principal place of business.

Upon making such application, the applicant shall pay to the registrar of motor vehicles, in addition to the fees required of dealers under the provisions of section 53-122, a fee of five dollars (\$5). Upon receipt of the application, fee and bond, as provided above, the registrar of motor vehicles shall examine the application, and may, prior to issuing a license, make individual investigation of the truth of the statements contained in the application. If the registrar of motor vehicles is satisfied that the applicant qualifies for the issuance of a dealer's license under the provisions of this act, he may thereupon issue the same.

Every dealer licensed under this section shall keep a book or record of the purchase, sale or exchange or receipt for the purpose of sale, of any used vehicle, a description of such vehicles, together with the name and address of the seller, of the purchaser, and of the alleged owner or other person from whom such vehicle was purchased or received, or to whom it was sold or delivered, as the case may be. Such description in the case of motor vehicles shall also include the engine number, if any, the maker's number, if any, chassis number, if any, and such other numbers or identification marks as may be thereon, and shall include a statement that a number has been obliterated, defaced or changed, if such is the fact. In the case of a trailer, semitrailer or special mobile equipment, the record shall include the manufacturer's number and such other numbers or identification marks as may be thereon. He shall also have in his possession a duly assigned certificate of title from the owner of said motor vehicle in accordance with the provisions of another section of this act, from the time when the motor vehicle is delivered to him until it has been disposed of by him.

Upon the licensing of a dealer as a new motor vehicle dealer, used motor vehicle dealer, or trailer, semitrailer, or special mobile equipment dealer, or a dealer of the motorcycle-type vehicle, the registrar of motor vehicles shall assign to such dealer a distinctive serial license number as a dealer and furnish every qualified dealer in motor vehicles with not less than two (2) sets of number plates, and as many more as the fee the dealer pays entitles the dealer to, which number plates shall be similar

to number plates furnished to owners of motor vehicles but shall bear thereon, in addition to the serial number assigned such dealer, the letter "D" if the dealer sells new motor vehicles (including trucks and trailers) or new and used motor vehicles (including trucks and trailers); the letters "UD" if the dealer sells used motor vehicles (including trucks and trailers) only; and the letters "DTR" if the dealer sells trailers, semi-trailers or special mobile equipment (new or used) only, and the letters "MCD" if the dealer sells vehicles of the motorcycle type. Only new motor vehicle dealers' license plates bearing the letter "D" shall be assigned if both new and used motor vehicles (including trucks and trailers) are sold, and only one license fee shall be required of any one dealer. The registrar of motor vehicles shall cause to be placed on each set of license plates issued to a dealer, a serial number assigned to each dealer and the actual number of license plates issued to each dealer. The number of the dealer shall follow the prefix of the county, and the number of plates issued the dealer shall follow the prefix of the county and the number of the dealer, the dealer's number to be separated from the county prefix by a dash, and the number of plates issued to a dealer to be separated from the dealer's number by a dash, as follows: Dealer number 4 in Lewis and Clark County would be numbered 5-4, and if the dealer were issued three sets of plates, they would be numbered consecutively as follows, 5-4-1, 5-4-2 and 5-4-3. Dealers properly licensed under this section are authorized to use and display, dealer's license plates on any motor vehicle held for sale or used principally in the conduct of the dealer's business in selling or demonstrating motor vehicles. No dealer's license plate shall be used or displayed on vehicles normally used for hire, lease or rental or for purposes not incident to the business of a motor vehicle dealer. If it shall appear to the satisfaction of the registrar of motor vehicles, from information furnished to him by the sheriff or any other law enforcement officer, that any such dealer has been improperly licensed, has used the dealer's license in a manner other than the one permitted above, or is not qualified as a dealer under the requirements of this section, the registrar of motor vehicles may revoke such dealer's license. No person, firm, corporation or association shall, for commission or profit, engage in the business of buying, selling, exchanging or acting as a broker of new motor vehicles, trailers or semitrailers unless duly licensed in compliance with this section (except trailers having an unladen weight of less than five hundred (500) pounds).

Any person violating the provisions of this section shall be guilty of a misdemeanor and subject to a fine of not less than two hundred fifty dollars (\$250) and not more than five hundred dollars (\$500). For the purposes hereof, every sale of a motor vehicle in violation of the provisions of this section shall be deemed a separate offense.

**History:** En. Subd. 5, Sec. 1, Ch. 158, L. 1933; amd. Sec. 2, Ch. 72, L. 1937; amd. Sec. 2, Ch. 245, L. 1955; amd. Sec. 3, Ch. 256, L. 1965; amd. Sec. 1, Ch. 354, L. 1969; amd. Sec. 2, Ch. 226, L. 1971; amd. Sec. 2, Ch. 244, L. 1971.

#### **Compiler's Notes**

This section was amended twice in 1971, once by Ch. 226 and once by Ch. 244. Neither amendatory act mentioned nor included the changes made by the other. Since the amendments do not appear to conflict the compiler has made a com-



posite section incorporating both amendments.

### Amendments

The 1965 amendment completely rewrote this section. For previous text, see parent volume.

The 1969 amendment, in the first paragraph, inserted "except trailers \* \* \* pounds" after "trailers" in the first sentence, substituted "Montana highway patrol" for "sheriff of the county in which the business is to be conducted, as designated in subparagraph (b) below" in the second sentence and deleted a third sentence which read "A fee of two dollars (\$2) shall be paid to the sheriff for such verification"; in the second paragraph, substituted "five thousand dollars (\$5,000)" for "one thousand dollars (\$1,000.00)" and added "and shall be renewed annually"; in the sixth paragraph inserted the third and fourth sentences, deleted "exclusively" before "for hire" and inserted "lease or rental" in the sixth sentence, and added "except trailers \* \* \* pounds" at the end of the eighth sentence; and, in the seventh paragraph changed the minimum fine from \$50 to \$250 and the maximum fine from \$300 to \$500.

Chapter 226, Laws of 1971, inserted references to motorcycle dealers and to MCD plates near the end of the paragraph preceding the lettered subdivisions and in two places in the fifth paragraph following the lettered subdivisions, and made minor changes in style.

Chapter 244, Laws of 1971, inserted references to special mobile equipment dealers near the middle of the paragraph preceding the lettered subdivisions, in subdivision (f), in the fourth paragraph following the lettered subdivisions, and in two places in the fifth paragraph following the lettered subdivisions; and made minor changes in style, phraseology, and punctuation.

### Cross-References

Registrar's position abolished and functions transferred, sec. 82A-1205 (1).

### Dealer's Plates

Fact that dealer-transferor placed dealer's plates on automobile sold on Saturday in order that transferee might drive the vehicle over the weekend did not estop dealer and his insurer from denying ownership of vehicle at time of accident later that day. *Phoenix Ins. Co. v. Newell*, 329 F Supp 172.

## 53-118.1 to 53-118.5. Repealed.

### Repeal

Sections 53-118.1 to 53-118.5 (Secs. 1 to 5, Ch. 36, L. 1965), relating to truck

demonstration permits, were repealed by Sec. 6, Ch. 209, Laws 1971.

## 53-118.6 to 53-118.10. [Transferred.]

### Compiler's Notes

Sections 168 to 172, Ch. 316, Laws of

1974 renumbered these sections as secs. 32-3315.1 to 32-3315.5.

**53-119. (1759.5) Must have license plates.** Except as otherwise provided herein, no person shall operate a motor vehicle upon the public highways of this state without a license and unless such vehicle shall have been properly registered and shall have the proper number plates conspicuously displayed, one (1) on the front and one (1) on the rear of such vehicle, each securely fastened so as to prevent the same from swinging and unobstructed from plain view, except that trailers and semitrailers shall have but one (1) number plate conspicuously displayed on the rear. No person shall display on such vehicle at the same time any number assigned to it under any motor vehicle law, except as in this act otherwise provided. No person shall purchase or display on such vehicle any license plate bearing the number assigned to any county as provided in section 53-106, other than the county of his permanent residence at the time of application for registration. Provided, however, that the owner of any motor vehicle requiring a license plate on any motor vehicle used in the public transportation of persons or property may make application therefor in any county through which said motor vehicle passes in its

regular scheduled route, and the license plate so issued bearing the number assigned to said county may be displayed on said motor vehicle in any other county of the state. It is further provided that it shall be unlawful to use license plates issued to one (1) vehicle on any other vehicle, trailers or semitrailers unless legally transferred as provided by statute, or repainting old license plates to resemble current license plates and any person violating these provisions shall be deemed guilty of a misdemeanor and shall be subject to the penalty as set out in section 53-132. Provided, however, that a junk vehicle, as defined in chapter 410, Montana Session Laws 1973, Title 69, chapter 68, R. C. M. 1947, being driven or towed to an auto wrecking graveyard for disposal is exempt from the provisions of this section.

**History:** En. Subd. 6, Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 154, L. 1937; amd. Sec. 1, Ch. 73, L. 1941; amd. Sec. 10, Ch. 127, L. 1969; amd. Sec. 1, Ch. 18, L. 1974.

#### Amendments

The 1969 amendment substituted "registration" for "and issuance of said license plates" at the end of the third sentence,

deleted a statement of the validity of a current year's license plate used on the transfer of ownership of any used motor vehicle in the first proviso, and, in the last sentence, inserted "unless legally transferred as provided by statute" after "semitrailers."

The 1974 amendment added the proviso at the end of the section.

**53-119.1. Special permits for vehicles engaged in a single movement on the highways—fee—limitation—county treasurer to issue.** A vehicle, subject to license under Title 53, may be moved unladen upon the highways of this state from a point within the state to a point of destination, the county treasurer at the point of the origin of the movement, shall issue a special permit therefor in lieu of fees required under sections 53-122 and 53-615, upon application presented to him in such form as shall be provided by the registrar of motor vehicles and upon exhibiting to said county treasurer proof of ownership and evidence that the personal property taxes on such vehicle, if any are due thereon, have been paid and upon payment therefor a fee of five dollars (\$5). Such permit shall not be in lieu of fees and permits required under sections 53-630 through 53-638.

Such permit shall be for the transit of the vehicle only, and the vehicle shall not at the time of such transit, be used for the transportation of any persons, except the driver, or property whatsoever for compensation or otherwise, and shall be for one (1) transit only between the points of origin and destination as set forth in the application and shown on the permit. Provided, however, that a junk vehicle as defined in chapter 410, Montana Session Laws 1973, Title 69, chapter 68, R. C. M. 1947, being driven or towed to an auto wrecking graveyard for disposal is exempt from the provisions of this section.

For the purpose of this section, a mobile home shall be considered unladen, when all items are removed, except the equipment originally installed by the manufacturer; and personal effects of owners.

Definition of a mobile home—house trailer for the purposes of this section. A trailer or semitrailer which is designed, constructed and equipped as a dwelling place, living abode or sleeping place (either permanently or temporarily) and is equipped for movement on streets and highways, and exceeds twenty-five (25) feet in length, exclusive of trailer hitch.

History: En. Sec. 1, Ch. 182, L. 1955; amd. Sec. 1, Ch. 126, L. 1965; amd. Sec. 2, Ch. 18, L. 1974.

#### Compiler's Notes

Sections 53-615, 53-630, 53-631, and 53-634 through 53-638, referred to in the first paragraph of this section, were repealed by Sec. 12-109, Ch. 197, Laws 1965.

#### Amendments

The 1965 amendment substituted the first paragraph for a sentence reading, "When any vehicle subject to license is to be moved upon the public highways of this state, from one point to another, the

county treasurer may issue a special permit therefor upon application presented to him in such form as shall be approved by the registrar of motor vehicles and upon payment thereof of a fee of five dollars (\$5.00)"; added "and shown on the permit" at the end of the second paragraph; and added the third and fourth paragraphs.

The 1974 amendment added the proviso at the end of the second paragraph.

#### Effective Date

Section 3 of Ch. 18, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved February 15, 1974.

**53-120. (1759.6) Replacing number plates.** In the event of loss, mutilation, or destruction of number plates, and/or validation devices, the owner of the registered motor vehicle may obtain from the registrar of motor vehicles, duplicates thereof upon filing sworn declaration showing such fact and payment of a fee of two dollars (\$2.00). In the event of loss, mutilation, or destruction of Pioneer plates, duplicates may be obtained in the same manner upon payment of a fee of five dollars (\$5.00).

History: En. Subd. 7, Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 47, L. 1955; amd. Sec. 1, Ch. 86, L. 1969; amd. Sec. 3, Ch. 226, L. 1971.

#### Amendments

The 1969 amendment added provision for obtaining duplicate Pioneer plates.

The 1971 amendment inserted the reference to validation devices in the first sentence.

**53-122. (1760) Registration fees of motor vehicles—registration and transfer thereof—public owned vehicles exempt from license or registration fees—license or registration fees for trailers, house trailers, semitrailers and tractors providing for disposition of all fees.** Registration or license fees shall be paid upon registration or reregistration of motor vehicles, trailers, house trailers, semitrailers and dealers in motor vehicles or trailers in accordance with this act, as follows:

All dealers in motor vehicles, a fee of thirty dollars (\$30.00): which shall entitle such dealer to two (2) sets of number plates, and five dollars (\$5.00) additional fee for each additional set of number plates up to six (6) sets, and two dollars (\$2.00) additional fee for each additional set of number plates, as may be applied for;

Dealers in motorcycles, trailers including house trailers, thirty dollars (\$30);

Motor vehicles, weighing twenty-eight hundred and fifty (2850) pounds, or under, other than motor trucks, five dollars (\$5.00);

Motor vehicles, weighing over twenty-eight hundred and fifty (2850) pounds, other than motor trucks ten dollars (\$10.00);

Electrically driven passenger vehicles, ten dollars (\$10.00);

All motorcycles, two dollars (\$2.00);

Tractors and/or trucks, ten dollars (\$10.00);

Buses shall be classed as motor trucks and licensed accordingly;



Trailers and semitrailers less than two thousand five hundred (2,500) pounds maximum gross loaded weight and house trailers of all weights, two dollars (\$2.00);

Trailers and semitrailers over two thousand five hundred (2,500) up to six thousand (6,000) pounds maximum gross loaded weight, except house trailers, five dollars (\$5.00);

Trailers and semitrailers over six thousand (6,000) pounds maximum gross loaded weight, ten dollars (\$10.00);

Trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery and bridge material exclusively, new and secondhand, and trailers used exclusively for the transportation of road machinery and bridge materials, shall pay a fee of fifteen dollars (\$15.00) annually, regardless of size or capacity.

All rates to be twenty-five per cent (25%) higher for motor vehicles, trailers and semitrailers, when not equipped with pneumatic tires.

Bicycles with motor attachment, one dollar (\$1.00);

Tractors, as specified in this section, shall mean any motor vehicle, except passenger cars used for towing a trailer or semitrailer.

If any dealer, or motor vehicle, house trailer, trailer, or semitrailer is originally registered six (6) months after the time of registration as set by law, the registration or license fee for the remainder of such year shall be one-half ( $\frac{1}{2}$ ) of the regular fee above given.

A dealer in motor vehicles or trailers who shall maintain more than one (1) place of business or who shall maintain any branch establishment or establishments, must register and pay a registration or license fee for each such place of business or establishment.

A registered dealer, who may sell or dispose of his entire business to any other person, may have his certificate of registration transferred to such purchaser upon filing with the registrar of motor vehicles a statement containing the name of the registered dealer, the number under which such dealer is registered, the name of the purchaser, and the location of the place of business so sold. Upon the filing of such statement, accompanied by a filing fee of two dollars (\$2.00), the registrar of motor vehicles shall note upon the registration record of such dealer the change of ownership. But no certificate of registration can be transferred unless the entire business of the dealer holding such certificate of registration be sold and disposed of, and no such certificate of registration can be transferred to any person other than the purchasers of such business.

The provisions of this act with respect to the payment of registration fees shall not apply to or be binding upon motor vehicles, trailers or semitrailers or tractors owned or controlled by the United States of America or any state, county or city, but in all other respects the provisions of this act shall be applicable to and binding upon motor vehicles, tractors, trailers, and semitrailers.

All fees, other than license fees, unless otherwise specifically provided, shall hereafter be deposited in, and paid into, the earmarked revenue fund and shall be used to pay all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles, including

the manufacturer and delivery of license plates. Any reference in this code to the motor vehicle recording fund or the motor vehicle administration fund shall be taken to mean the motor vehicle recording account in the earmarked revenue fund.

**History:** En. Sec. 6, Ch. 75, L. 1917; amd. Sec. 2, Ch. 207, L. 1919; amd. Sec. 1, Ch. 199, L. 1921; re-en. Sec. 1760, R. C. M. 1921; amd. Sec. 1, Ch. 107, L. 1923; amd. Sec. 1, Ch. 88, L. 1927; amd. Sec. 1, Ch. 182, L. 1929; amd. Sec. 1, Ch. 103, L. 1933; amd. Sec. 1, Ch. 38, Ex. L. 1933; amd. Sec. 1, Ch. 138, L. 1937; amd. Sec. 1, Ch. 125, L. 1939; amd. Sec. 2, Ch. 154, L. 1943; amd. Sec. 2, Ch. 200, L. 1945; amd. Sec. 1, Ch. 201, L. 1945; amd. Sec. 1, Ch. 221, L. 1951; amd. Sec. 1, Ch. 215, L. 1953; amd. Sec. 1, Ch. 41, L. 1955; amd. Sec. 228, Ch. 147, L. 1963; amd. Sec. 1, Ch. 178, L. 1963; amd. Sec. 30, Ch. 121, L. 1965; amd. Sec. 12-105, Ch. 197, L. 1965; amd. Sec. 4, Ch. 226, L. 1971.

#### Amendments

Chapter 147, Laws 1963, substituted "the earmarked revenue fund and shall be used to pay" in what is now the last paragraph for "the motor vehicle recording fund of said registrar (sometimes called the motor vehicle administrative fund) out of which shall be paid"; added the second sentence to the same paragraph; deleted a former next to last paragraph reading, "There shall be immediately transferred from the motor vehicle fund of the registrar of motor vehicles to the said motor vehicle recording fund all moneys now in said motor vehicle fund which were collected by the registrar of motor vehicles as fees other than license fees"; and substituted "motor vehicle recording account" for "motor vehicle recording fund" in the paragraph later deleted by Ch. 121, Laws 1965.

Chapter 178, Laws 1963, amended former paragraph (c), for previous text of which see parent volume, to read, "In every county which does not have within its borders a city and area coming within the provisions of subsections (a) and (b) above, the net license fee derived from the registration of motor vehicles shall be by the registrar of motor vehicles transmitted to, and paid over to the county treasurer of each such county and shall be allocated and divided by the county treasurer as hereinafter provided. The motor vehicle license fund in each such county shall be divided between accounts designated as 'city road fund' and 'county road fund' in a prorata manner based upon the total number of miles of all public streets and highways situated within the limits of incorporated cities and towns within each county as compared with the total number of miles of public

streets and highways situated within the county, but outside the corporate limits of any incorporated cities and towns"; inserted immediately after former paragraph (c) two new paragraphs reading, "The license fees held in the city road fund, as hereinabove provided shall be at the end of each thirty (30) day period beginning March 1, 1964, be paid by the county treasurer to the treasurer of each incorporated city or town within the county in a pro rata manner based upon the number of miles of all public streets and highways situated within such city or town as compared to the total number of miles of all public streets and highways within the limits of all incorporated cities and towns within the county. The city or town treasurer shall hold said moneys in a separate fund designated as the 'city road fund' which shall be used by the city or town council only for the construction and repair of streets and highways within the corporate limits of such incorporated city or town" and "The net license fees derived from the registration of vehicles shall be used by said county for the construction, repair and maintenance of all public highways, except state and federal highways, within the boundaries of said county"; and added a final paragraph reading, "The board of county commissioners of each county which does not have within its borders a city and area coming within the provisions of subsections (a) and (b) above shall prior to March 1 of each year, beginning with the year 1964, determine the number of miles of public streets and highways situated in each incorporated city and town in the county, and the number of miles of public streets and highways within the county, but outside the corporate limits of the incorporated cities and towns, in order that the motor vehicle license and registration fees can be divided between the 'county road fund' and each 'city road fund' in the pro rata manner as provided in this act. The board of county commissioners shall at the same time also compute the percentage of said motor vehicle license and registration fees to be paid by the county treasurer to the treasurer of each incorporated city and town and also the percentage to be deposited in the county road fund."

Chapter 121, Laws 1965, adopted both 1963 amendments; increased the fee for change of ownership by registered dealer from \$1.00 to \$2.00; substituted "unless otherwise specifically provided" for "men-

tioned and described in sections 53-110 and 53-112, and in section 53-135" near the beginning of what is now the final paragraph; and deleted a next to last paragraph reading, "Whenever, in the judgment of the state board of examiners, there shall be in said motor vehicle recording account more moneys than are reasonably required or needed to pay all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles, such board shall distribute such unneeded surplus or excess to the fifty-six (56) counties of the state in a pro rata manner based upon the total number of motor vehicles registered in each county."

Chapter 197, Laws 1965, effective December 31, 1966, deleted several paragraphs relating to the county motor vehicle license fund, for text of which see pages 538 and 539 in parent volume and above note relating to Chapter 178, Laws 1963; and deleted the three paragraphs inserted and added by Chapter 178, Laws 1963.

The 1971 amendment deleted "other than motorcycles" following "dealers in motor vehicles" at the beginning of the second paragraph; deleted from the end of the second paragraph a proviso reading "provided, that each dealer be required to furnish the registrar of motor vehicles a statement showing the makes of motor vehicles handled by him, and the total number of each make sold by him during the preceding year, and that he not be issued a license unless he so conforms"; increased the fee for dealers in motorcycles and trailers from \$15.00 to \$30.00; and made minor changes in phraseology.

#### Cross-Reference

Property tax stickers required on house trailers, secs. 84-6601 to 84-6605.

#### References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

**53-129. (1760.7) Foreign vehicles used in gainful occupation—reciprocity board may make reciprocal agreements to exempt.** Before any foreign licensed motor vehicle shall be operated on the highways of this state for hire, compensation or profit, or before the owner and/or user thereof uses the vehicle if such owner and/or user is engaged in gainful occupation or business enterprise, in the state of Montana, including highway work, the owner of such vehicle shall make application to a county treasurer for registration, upon an application form furnished by the registrar of motor vehicles. Upon satisfactory evidence of ownership submitted to such county treasurer, and the payment of property taxes as is required by sections 84-6008 or 84-406, the treasurer shall accept the application for registration and shall collect the regular license fee required for the vehicle. The treasurer shall thereupon issue to the applicant a copy of the application entitled "Owner's Certificate of Registration Receipt" and forward a duplicate copy of certificate of registration to the registrar of motor vehicles. The treasurer shall at the same time issue to the applicant the proper license plates or other identification markers, which shall at all times be displayed upon such vehicle, when operated or driven upon roads and highways of this state, during the period of the life of such license. The registration receipt shall not constitute evidence of ownership, but shall only be used for registration purposes. No Montana certificate of title shall be issued for this type of registration. This paragraph shall not be applicable to any vehicle covered by a valid and existing reciprocal agreement or declaration entered into under the provisions of the laws of Montana.

**History:** En. Sec. 7, Ch. 121, L. 1929; amd. Sec. 7, Ch. 126, L. 1933; amd. Sec. 1, Ch. 93, L. 1939; amd. Sec. 1, Ch. 296, L. 1947; amd. Sec. 3, Ch. 195, L. 1953; amd. Sec. 1, Ch. 143, L. 1955; amd. Sec. 26, Ch. 206, L. 1963; amd. Sec. 2, Ch. 290, L. 1967.



### Amendments

The 1963 amendment deleted former subsections (2) and (3), for text of which see parent volume; and substituted "under the provisions of this act" for "as hereinafter set forth" after "entered into under" at the end of this section.

The 1967 amendment inserted "and/or user" after "owner" and substituted "if such owner and/or user is" for "while" after "uses the vehicle" in the first

sentence; inserted "and the payment of property taxes as is required by sections 84-6008 or 84-406" after "county treasurer" in the second sentence; deleted "which is a part of an interstate fleet registered and licensed under the provisions of section 53-114, nor to any vehicle" before "covered by" and substituted "the laws of Montana" for "this act" after "the provisions of" in the last sentence.

**53-133. (1763) Definitions.** The words and phrases used in this act shall be construed as follows, unless the context may otherwise require:

a to f. \* \* \* [Same as parent volume.]

g. The term "dealer" shall mean and include any person, firm, association, or corporation engaged in whole or in part in the business of buying, selling, exchanging, or acting as a broker of either new or used motor vehicles, or both, and who is qualified for issuance of a dealer's license under section 53-118, and no person, firm, association or corporation shall be issued a dealer's license by the registrar of motor vehicles unless they qualify as a dealer defined herein. The term "dealer" does not include the following: (1) Receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction; or (2) employees of such persons when engaged in the specific performance of their duties as such employees; or (3) public officers while performing or in the operation of their duties. A dealer dealing in used cars only shall deliver to the buyer on completion of sale a transferable title, and shall purchase a Montana store license.

h to j. \* \* \* [Same as parent volume.]

k. The term "manufacturer" shall include any person, firm, corporation or association engaged in the manufacture of any motor vehicles, trailers, or semitrailers as a regular business. Dealer shall deliver, under oath, a notarized certificate with any used motor vehicle, stating the full name and last known address of the previous owner of said motor vehicle, and state where the motor vehicle was last registered.

**History:** En. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R. C. M. 1921; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965.

### Amendment

The 1965 amendment divided the language in former paragraph g into the present first and third sentences of paragraph g; inserted "association" after "firm" in two places in the first sentence of paragraph g; substituted "exchanging, or acting as a broker of" for "repairing, and reconditioning" after "business of buying, selling" in the first sentence of paragraph g; substituted "is qualified for issuance of a dealer's license under section

53-118" for "maintains a place of business with adequate facilities and equipment for the servicing, repair, maintenance, and reconditioning of new or used motor vehicles and also adequate display facilities for at least one motor vehicle" in the first sentence of paragraph g; deleted from the end of the present first sentence of paragraph g a proviso reading, "provided, however, that a used car dealer only shall have a building as an established place of business and need no facilities for repair, maintenance and reconditioning of used cars"; inserted the second sentence in paragraph g; inserted "A dealer dealing in used cars only" at the beginning of the third sentence of paragraph g; and added the last sentence to paragraph k.

**Repealing Clauses**

Section 5 of Ch. 256, Laws 1965 read "Section 53-138, R. C. M. 1947, is repealed."

Section 7 of Ch. 256, Laws 1965 repealed all acts and parts of acts in conflict therewith.

**Separability Clause**

Section 6 of Ch. 256, Laws 1965 read "If any clause, sentence, paragraph or part of this act shall be adjudged by any

court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, paragraph or part directly adjudged to be invalid or inoperative."

**References**

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

**53-136. (1763.4) Alteration or forgery of certificate of title or assignment thereof and penalty therefor.** Any person who shall alter or forge or cause to be altered or forged, any motor vehicle certificate of title or any assignment thereof, or who shall hold or use any such certificate or assignment knowing the same to have been altered or forged, shall be deemed guilty of a felony, upon which conviction thereof shall be liable to pay a fine of not more than five thousand dollars (\$5,000) or to imprisonment in any penal institution within the state for a period of not more than ten (10) years, or both, in the discretion of the court.

**History:** En. Sec. 12, Ch. 113, L. 1925; amd. Sec. 1, Ch. 334, L. 1969.

vehicle" before "certificate of title" and deleted "issued by the registrar of motor vehicles pursuant to the provisions of this section" after "certificate of title."

**Amendments**

The 1969 amendment inserted "motor

**53-138. (1763.6) Repealed.****Repeal**

This section (Sec. 14, Ch. 113, L. 1925; Sec. 1, Ch. 221, L. 1947), relating to the

licensing of used car dealers, was repealed by Sec. 5, Ch. 256, Laws 1965.

**53-139. (1763.7) Penalty for sale of vehicle with engine number altered or changed—application for special number.** (1) Any person or persons, firm or corporation, who, thirty days after the taking effect of this section, shall sell or offer for sale in this state a vehicle, the original engine number of which has been destroyed, removed, altered, covered or defaced, with the exception of electrically propelled vehicles shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than two hundred dollars, nor more than five hundred dollars, and by imprisonment in the county jail for a term of not less than thirty days nor more than one hundred and eighty days, and upon a second or subsequent conviction under this section, the punishment shall be imprisonment in the state prison for a term of not less than one year nor more than five years: Provided, however, that any person or persons, firm or corporation, being the owner or custodian of or having possession of a vehicle at the time of the taking effect of this article, the original engine number of which has been previously destroyed, removed, altered or defaced, shall before the expiration of thirty days after the taking effect of this article apply to the registrar of motor vehicles on a blank to be prepared and furnished by the registrar of motor vehicles upon request, for permission to make or stamp, or

cause to be made or stamped on the engine of such vehicle, a special engine number.

(2) \* \* \* [Same as parent volume.]

(3) Upon receipt of such application, together with a fee of two dollars (\$2.00), the registrar of motor vehicles shall issue to said applicant written permission to make or stamp on the engine of such vehicle a special engine number to be designated by the registrar of motor vehicles, and when such special engine number so designated has been stamped or otherwise placed on the engine of such motor vehicle it shall become and thereafter be the lawful engine number of such vehicle, for the purpose of identification and registration and for all other purposes under the provisions of this chapter, and the owner thereof may sell or transfer the same under said special engine number so designated by the registrar of motor vehicles; and any person or persons who shall destroy, remove, cover, alter or deface any special engine number so designated by the registrar of motor vehicles shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison for a term of not less than two years nor more than ten years.

(4) In designating special engine numbers for motor vehicles under the provisions of this chapter the registrar of motor vehicles shall designate and number the same consecutively, beginning with the number (1), preceded by the letters S. N. and followed by the letters for each and every make of motor vehicle for which a special application engine number shall be made, and in the order of the filing of application therefor: Provided, that from and after the taking effect of this section, the registrar of motor vehicles shall not register any vehicle without an engine number or issue a license for the operation of the same except as specifically provided for herein; and further, before issuing said license the registrar of motor vehicles shall require of the applicant a statement that the special number assigned to be placed on the particular vehicle in question has been put on in a workmanlike manner, and this statement shall be certified to by the sheriff, chief of police, or other convenient peace officer, that he has inspected said vehicle and found said number to be on said motor vehicle as required by the registrar of motor vehicles. Nothing herein shall be construed to prevent any manufacturer or importer, or their agents other than dealers, from doing his own numbering on motor vehicles or parts removed or changed and replacing the numbered parts.

**History:** En. Sec. 15, Ch. 113, L. 1925;  
amd. Sec. 31, Ch. 121, L. 1965.

**Amendment**

The 1965 amendment increased the fee specified near the beginning of subsection (3) from \$1.00 to \$2.00; and made minor changes in subsections (1) and (4).

**53-139.1. Penalty for altering identification number.** A person who willfully removes or falsifies an identification number of a motor vehicle or engine for a motor vehicle is guilty of a misdemeanor.

**History:** En. Sec. 1, Ch. 256, L. 1969.

**Title of Act**

An act to make unlawful acts relating to altering the identification numbers of motor vehicles.



**53-145. Expiration of registration on transfer of ownership of vehicle—duty to remove plates.** Upon the transfer of ownership of a motor vehicle, the registration of the motor vehicle shall expire and it shall be the duty of the transferor immediately to remove the license plates from the vehicle.

**History:** En. Sec. 1, Ch. 127, L. 1969.

**Title of Act**

An act pertaining to the registration of motor vehicles; requiring removal of license plates from motor vehicles upon transfer of ownership, authorizing transferor to transfer license plates from original motor vehicle to another motor ve-

hicle acquired during current registration year upon proper application and payment of fees and taxes, if any; requiring new application and registration for all motor vehicles transferred within ten (10) days; and amending sections 32-3203, 53-106, 53-106.6, 53-107, 53-108, 53-115 and 53-119, R. C. M. 1947.

**53-146. Transfer of license plates to another motor vehicle.** Should the transferor make application for the registration of another motor vehicle at any time during the remainder of the current registration year, he may file an application, in the office of the county treasurer where the motor vehicle is taxable, upon a form to be prepared and furnished by the registrar of motor vehicles, accompanied by the original certificate of registration, for the transfer of the license plates. The application for transfer of the license plates from the motor vehicle for which originally issued to a motor vehicle acquired by the same person in whose name the original license plates were issued shall be made within ten (10) days from date of acquiring the vehicle. The use of the license plates shall not be legalized until proper transfer of license plates has been made.

**History:** En. Sec. 2, Ch. 127, L. 1969; amd. Sec. 6, Ch. 138, L. 1971.

**Amendments**

The 1971 amendment inserted "application for" before "transfer of the license plates" at the beginning of the second sentence.

**53-147. New registration required for transferred vehicle—grace period—penalty—display of proof of purchase.** Except as otherwise provided herein, the new owner of the transferred motor vehicle shall have the grace period of ten (10) days from the date of purchase to make application and pay the registration fees and taxes as provided by section 53-114, as if the same was being registered for the first time in that registration year, and, provided the motor vehicle was not purchased from a duly licensed motor vehicle dealer as provided in this chapter, it shall not be a violation of this chapter or any other law for the purchaser to operate the vehicle upon the streets and highways of this state without a certificate of registration during the ten (10) day period; provided, however, that at all times during that period a bill of sale or other proof of purchase reciting the date of purchase shall be clearly displayed in the rear window of the motor vehicle at all times. Failure to make application within the time provided herein shall subject the purchaser to a penalty of ten dollars (\$10), plus one dollar (\$1) for each additional day in which the vehicle remains unregistered, not to exceed twenty-five dollars (\$25). The penalty shall be collected by the county treasurer at the time of registration, and shall be in addition to the fees otherwise provided by law.

**History:** En. Sec. 3, Ch. 127, L. 1969; amd. Sec. 7, Ch. 138, L. 1971; amd. Sec. 1, Ch. 187, L. 1974.

#### Amendments

The 1971 amendment inserted "Except as otherwise provided herein" at the beginning of the section.

The 1974 amendment substituted "shall

have the grace period of ten (10) days from the date of purchase" in the first sentence for "shall, before operating or driving the same upon the public highways of this state"; added the provisos to the first sentence beginning with "and, provided the motor vehicle was not purchased"; and added the second and third sentences.

**53-148. Personalized license plates authorized.** Any person who is the registered owner of a passenger motor vehicle registered with the registrar of motor vehicles, or who makes application for original registration of a passenger motor vehicle or renewal registration of a passenger motor vehicle may, upon payment of the fee prescribed in section 6 [53-153] of this act, apply to the registrar of motor vehicles for personalized license plates, in the manner prescribed in section 5 [53-152] of this act which plates shall be affixed to the passenger motor vehicle for which registration is sought in lieu of the regular license plates provided for in this article [chapter].

**History:** En. 53-148 by Sec. 1, Ch. 257, L. 1973.

a passenger motor vehicle registered with the registrar of motor vehicles to obtain personalized license plates.

#### Title of Act

An act to allow the registered owner of

**53-149. Color and design of personalized plates.** The personalized license plates shall be the same color and design as regular passenger motor vehicle license plates and shall consist of numbers or letters, or any combination thereof not exceeding eight (8) positions and not less than two (2) positions, provided that there are no conflicts with existing passenger, commercial, trailer, motorcycle or special license plate series under this title.

**History:** En. 53-149 by Sec. 2, Ch. 257, L. 1973.

**53-150. Definition of personalized license plates.** Personalized license plates, as used in this article [chapter], mean license plates that have displayed upon them the registration number assigned to the passenger motor vehicle for which such registration number was issued in a combination of letters or numbers, or both, requested by the owner of the vehicle.

**History:** En. 53-150 by Sec. 3, Ch. 257, L. 1973.

**53-151. Personalized license plates restricted to registered owner.** Personalized license plates shall be issued only to the registered owner of the vehicle upon which they are displayed.

**History:** En. 53-151 by Sec. 4, Ch. 257, L. 1973.

**53-152. Application for personalized plates—duplication—good taste.** An applicant for issuance of personalized license plates or renewal of such plates in subsequent years pursuant to this act shall file an application therefor in such form and by such date as the department may

require, indicating thereon the combination of letters or numbers, or both, requested as a registration number. There shall be no duplication of registration numbers, and the registrar of motor vehicles may refuse to issue any combination of letters or numbers, or both, that may carry connotations offensive to good taste and decency or which would be misleading or a duplication of license plates provided for elsewhere in this title.

History: En. 53-152 by Sec. 5, Ch. 257,  
L. 1973.

**53-153. Fees for personalized plates—disposition.** In addition to all other fees and taxes imposed by law, the applicant for a personalized license plate shall pay a fee of twenty dollars (\$20) for the original personalized license plate and a fee of five dollars (\$5) for each transfer or renewal thereof. All revenue derived from the fee as provided herein shall be deposited in the motor vehicle recording account of the earmarked revenue fund.

History: En. 53-153 by Sec. 6, Ch. 257,  
L. 1973.

## CHAPTER 2—USE OF HIGHWAYS BY NONRESIDENT CAR OWNERS— ACCIDENTS—SERVICE OF PROCESS

### 53-202. Secretary of state attorney for service of process.

#### References

Olsen v. Dairyland Mut. Ins. Co., 248  
F Supp 639.

### 53-203. Operation of motor vehicle as appointment, etc.

#### References

Olsen v. Dairyland Mut. Ins. Co., 248  
F Supp 639.

### 53-204. Repealed.

#### Repeal

This section (Sec. 4, Ch. 10, L. 1937;  
Sec. 10, Ch. 117, L. 1961), relating to service of process on nonresident motorist, was repealed by Sec. 2, Ch. 189, Laws 1963.

## CHAPTER 4—ELIMINATION OF RECKLESS DRIVING—RESPONSIBILITY OF MOTOR VEHICLE OWNERS AND OPERATORS

### Section 53-418. Definitions.

53-420. Supervisor to furnish operating record.

53-428. Matters not to be evidence in civil suits.

53-431. Suspension to continue until judgments paid and proof given—  
maximum period of suspension.

53-432. Satisfaction of judgments.

53-438. Motor vehicle liability policy defined.

53-449. Violations of act—penalties.

53-450. Exceptions.

**53-418. Definitions.** The following words and phrases, when used in this act shall, for the purposes of this act, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:



1 to 11. \* \* \* [Same as parent volume.]

12. "Proof of financial responsibility"—Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of ten thousand dollars (\$10,000) because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of twenty thousand dollars (\$20,000) because of bodily injury to or death of two or more persons in any one accident, and in the amount of five thousand dollars (\$5,000) because of injury to or destruction of property of others in any one accident.

13 and 14. \* \* \* [Same as parent volume.]

**History:** En. Sec. 1, Ch. 204, L. 1951; amd. Sec. 1, Ch. 30, L. 1967.

#### Amendments

The 1967 amendment amended subsection 12 to increase the minimum requirements of financial responsibility from \$5,000 to \$10,000 for bodily injury to or death of one person in any one accident, from \$10,000 to \$20,000 for bodily injury to or death of two or more persons in any one accident, and from \$1,000 to \$5,000 for injury to or destruction of property of others in any one accident.

#### Intent of Legislature

General legislative intent in enacting financial responsibility provisions of the Motor Vehicle Safety Responsibility Act was: (1) to provide for voluntary and not compulsory automobile liability insurance for motorist who has not become involved in automobile accident, (2) to require compulsory proof of ability to respond in damages resulting from automobile accident after motorist becomes involved in such accident, and (3) to require compulsory proof of financial responsibility for future automobile accidents, from motorist (a) convicted of certain driving

offenses, or (b) who has outstanding unsatisfied judgment against him as result of past automobile accident; motorist who voluntarily carried ordinary automobile liability policy at time he became involved in accident was exempted from requirements of proof of ability to respond in damages whereas motorist who has neither been convicted nor forfeited bail for one of driving offenses referred to in act nor who has outstanding unsatisfied judgment against him as result of previous automobile accident is not required to furnish proof of future financial responsibility at all. *Boldt v. State Farm Mut. Automobile Ins. Co.*, 151 M 337, 443 P 2d 33.

#### Cross-References

Highway patrol board abolished and functions transferred, sec. 82A-1205 (2).

Highway patrol functions transferred, sec. 82A-1206.

Registrar's position abolished and functions transferred, sec. 82A-1205 (1).

#### References

*Schwentner v. White*, 199 F Supp 710, 711.

**53-420. Supervisor to furnish operating record.** The supervisor shall upon request furnish any person a certified abstract of the operating record of any person subject to the provisions of this act, which abstract shall also fully designate the motor vehicles, if any registered in the name of such person, and, if there shall be no record of any conviction of such person of violating any law relating to the operation of a motor vehicle or of any injury or damage caused by such person, the supervisor shall so certify. A fee of two dollars (\$2) shall be paid for said certified abstract.

**History:** En. Sec. 3, Ch. 204, L. 1951; amd. Sec. 17, Ch. 121, L. 1965; amd. Sec. 1, Ch. 381, L. 1971.

#### Amendments

The 1965 amendment increased the fee

specified in the final sentence from 50¢ to \$1.00.

The 1971 amendment increased the fee specified in the final sentence from \$1.00 to \$2.00.

**53-421 to 53-427. Repealed.****Repeal**

Sections 53-421 to 53-427 (Secs. 4 to 10, Ch. 204, L. 1951; Sec. 1, Ch. 187, L. 1957; Secs. 1, 2, Ch. 83, L. 1959; Sec. 2, Ch. 30, L. 1967; Sec. 1, Ch. 55, L. 1971; Sec. 1, Ch. 56, L. 1974), relating to requirements as to deposit of security following an accident, were repealed by Sec. 4, Ch. 184, Laws of 1974.

**53-428. Matters not to be evidence in civil suits.** Neither the action taken by the supervisor pursuant to this act, nor the findings, if any, of the supervisor upon which such action is based, shall be referred to in any way, nor be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages.

**History:** En. Sec. 11, Ch. 204, L. 1951; port required by section 53-421" after amd. Sec. 1, Ch. 184, L. 1974. "Neither" at the beginning of the section; deleted "nor the security filed as provided in this act" before "shall be referred to"; and made minor changes in phraseology.

**Amendments**

The 1974 amendment deleted "the re-

**53-431. Suspension to continue until judgments paid and proof given—maximum period of suspension.** Such license, registration and non-resident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided, and until the said person gives proof of financial responsibility subject to the exemptions stated in sections 53-430 and 53-433, or six (6) years have passed from date judgment was first entered as provided in section 93-5708.

**History:** En. Sec. 14, Ch. 204, L. 1951; was first entered as provided in section 93-5708" to the end of the first paragraph; and deleted a second paragraph purporting to save the requirements of the act against a discharge in bankruptcy.

**Amendments**

The 1973 amendment added "or six (6) years have passed from the date judgment

**53-432. Satisfaction of judgments.** Judgments herein referred to shall, for the purposes of this act only, be deemed satisfied:

1. when ten thousand dollars (\$10,000) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or
2. when, subject to such limit of ten thousand dollars (\$10,000) because of bodily injury to or death of one person, the sum of twenty thousand dollars (\$20,000) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury or death of two or more persons as the result of any one accident; or
3. when five thousand dollars (\$5,000) has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident;

Provided, however, payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor

vehicle accident shall be credited in reduction of the amounts provided for in this section.

**History:** En. Sec. 15, Ch. 204, L. 1951; amd. Sec. 3, Ch. 30, L. 1967.

amounts required by paragraphs 1 and 2; and increased the amount required by paragraph 3 from \$1,000 to \$5,000.

**Amendments**

The 1967 amendment doubled the

**53-438. Motor vehicle liability policy defined.** (a) \* \* \* [Same as parent volume.]

(b) Such owner's policy of liability insurance:

1. shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted; and

2. shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: ten thousand dollars (\$10,000) because of bodily injury to or death of one person in any one accident and subject to said limit for one person, twenty thousand dollars (\$20,000) because of bodily injury to or death of two or more persons in any one accident, and five thousand dollars (\$5,000) because of injury to or destruction of property of others in any one accident.

(c) to (f) \* \* \* [Same as parent volume.]

(g) No motor vehicle policy shall be subject to cancellation, termination, or premium increase, due to injury or damage incurred by the insured or operator unless the insured or operator be found to have violated a traffic law or ordinance of the state or a city, be found negligent or contributorily negligent in a court of law, or by the arbitration proceedings contained in chapter 201 of Title 93, R. C. M. 1947, or pays damages to another party whether by settlement or otherwise. In no event may a premium be increased during the term of the policy unless there is a change in exposure.

(h) \* \* \* [Same as (g) in parent volume.]

(i) \* \* \* [Same as (h) in parent volume.]

(j) \* \* \* [Same as (i) in parent volume.]

(k) \* \* \* [Same as (j) in parent volume.]

(l) \* \* \* [Same as (k) in parent volume.]

(m) A reduced limits endorsement shall not be issued by any company to be attached to any policy issued in compliance with this section.

**History:** En. 21, Ch. 204, L. 1951; amd. Sec. 1, Ch. 177, L. 1973; amd. Sec. 1, Ch. 260, L. 1973; amd. Sec. 1, Ch. 295, L. 1974.

once by Ch. 177 and once by Ch. 260. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a compo-

**Compiler's Notes**

This section was amended twice in 1973,



site section embodying the changes made by both amendments.

### Amendments

The 1967 amendment increased the minimum proof of financial responsibility from \$5,000 to \$10,000 because of bodily injury to or death of one person in any one accident, from \$10,000 to \$20,000 because of bodily injury to or death of two or more persons in any one accident, and from \$1,000 to \$5,000 because of injury to or destruction of property of others in any accident, all in subsection (b).

Chapter 177, Laws of 1973 inserted subsection (g); and relettered the succeeding subsections.

Chapter 260, Laws of 1973, added as subsection (l) the matter shown above as subsection (m).

The 1974 amendment added the last sentence to subsection (g).

### Defenses Available to Insurer

Insurance company being sued by injured party for amount of judgment previously secured against insured motorist was entitled to defend on ground that accident was not reported to it until year later, in breach of the policy provisions requiring prompt notice, despite contention that policy was subject to that portion of act eliminating policy defenses. *Boldt v. State Farm Mut. Automobile Ins. Co.*, 151 M 337, 443 P 2d 33.

### Garage Business Exclusion

Garage business exclusion clause of

policy was not violative of public policy as expressed in statute in absence of showing that policy was issued to show proof of financial responsibility. *Northern Assurance Co. of America v. Truck Ins. Exchange*, 151 M 132, 439 P 2d 760.

### Permitted User

Driver of insured's automobile was permitted user under this section even though permission came from insured's son and even though son had been told not to lend out the automobile, since the automobile was purchased for son's exclusive use away from home and son had ostensible authority to permit its use by third party. *Cascade Ins. Co. v. Glacier General Ins. Co.*, 156 M 236, 479 P 2d 259.

### Primary and Secondary Insurance

Where first liability policy provided primary coverage to driver when he was driving other vehicles except when there was "other collectible insurance" in which case it provided excess coverage, and second liability policy owned by auto agency insured driver only if there were "no other valid and collectible automobile liability insurance," the first policy was liable for the cost of defending an action for damages arising out of the accident. *Phoenix Ins. Co. v. Nationwide Mutual Ins. Co.*, 335 F Supp 671.

### References

*Empire Fire & Marine Ins. Co. v. Goodman*, 147 M 396, 412 P 2d 569.

**53-449. Violations of act—penalties.** (1) Any person who shall forge or, without authority, sign any evidence of proof of financial responsibility, or who files or offers for filing any such evidence of proof knowing or having reason to believe that it is forged or signed without authority, shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned for not more than one (1) year, or both.

(2) Any person whose license or registration or nonresident's operating privilege has been suspended or revoked under this act and who, during such suspension or revocation drives any motor vehicle upon any highway or knowingly permits any motor vehicle owned by such person to be operated by another upon any highway, except as permitted under this act, shall be fined not more than five hundred dollars (\$500.00) or imprisoned not exceeding six (6) months, or both.

(3) Any person willfully failing to return license or registration as required in section 53-448 shall be fined not more than five hundred dollars (\$500.00) or imprisoned not to exceed thirty (30) days, or both.

**History:** En. Sec. 32, Ch. 204, L. 1951; am. Sec. 2, Ch. 184, L. 1974.

### Amendments

The 1974 amendment deleted a beginning subsection relating to failure to re-

port an accident as required in former section 53-421; deleted reference to giving false information in such a report from the beginning of subsection (1); and made minor changes in style.

**53-450. Exceptions.** This act shall not apply with respect to any motor vehicle owned by the United States, this state or any political subdivision of this state or any municipality therein; nor, except for section 53-443, with respect to any motor vehicle which is subject to the provisions of section 8-113, requiring insurance or other security.

**History:** En. Sec. 33, Ch. 204, L. 1951;  
amd. Sec. 3, Ch. 184, L. 1974.

**Repealing Clause**

Section 4 of Ch. 184, Laws 1974 read  
"Sections 53-421, 53-422, 53-423, 53-424,  
53-425, 53-426, 53-427, R. C. M. 1947,  
are repealed."

**Amendments**

The 1974 amendment deleted "53-421"  
before "section 53-443."

**CHAPTER 5—STATE-OWNED OR LEASED MOTOR VEHICLES**

**Section 53-514.** Department of highways, motor pool division, custodian of motor vehicles owned or leased by state.

53-515. Rules—authority and enforcement.

53-516. Seal on motor vehicles.

53-517. State car for state business only—compensation for driving personal vehicle.

53-518. Adoption of travel rules—contents—removal from office for violations.

53-519. Requisitions for purchases—operating history records.

53-519.1. Transfer of vehicles to other agency.

53-519.2. Regulations for interagency rental.

53-519.3. Regulations concerning use of vehicles.

53-520. Certain motor vehicles exempted.

53-521. Violation a misdemeanor—dismissal.

**53-501. Repealed.**

**Repeal**

Section 53-501 (Sec. 1, Ch. 2, L. 1941;  
Sec. 1, Ch. 211, L. 1953), relating to color

and labeling of state-owned vehicles, was  
repealed by Sec. 9, Ch. 320, Laws 1971.

**53-503 to 53-508. Repealed.**

**Repeal**

Sections 53-503 to 53-508 (Secs. 1 to 6,  
Ch. 93, L. 1941; Secs. 2 to 6, Ch. 211, L.

1953; Sec. 1, Ch. 157, L. 1961), relating to  
the use of state-owned vehicles, were  
repealed by Sec. 9, Ch. 320, Laws 1971.

**53-510 to 53-513. Repealed.**

**Repeal**

Sections 53-510 to 53-513 (Sec. 9, Ch.  
93, L. 1941; Sec. 7, Ch. 211, L. 1953; Secs.

1 to 3, Ch. 181, L. 1969), relating to the  
state motor vehicle pool, were repealed by  
Sec. 9, Ch. 320, Laws 1971.

**53-514.** Department of highways, motor pool division, custodian of motor vehicles owned or leased by state. The department of highways, motor pool division is the custodian of all motor vehicles operated out of the Helena area used primarily to carry passengers or having a cargo rating of three-quarters ( $\frac{3}{4}$ ) of a ton or less and which do not carry specialized equipment that would render them unfit for interagency use owned or leased by the state or its agencies. The legal title to state-owned motor vehicles shall be held in the name of the state only and all agencies holding title to motor vehicles are hereby required to transfer the same to the state. In instances where such transfer would affect the federal funding of the agency involved, the agency transferring a vehicle in accord-

ance with this chapter shall be reimbursed in the amount of the fair value of the vehicle transferred necessary to assure continued participation in federal funding of [the] program.

**History:** En. Sec. 1, Ch. 320, L. 1971; amd. Sec. 173, Ch. 316, L. 1974; amd. Sec. 1, Ch. 355, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 196 and once by Ch. 218. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Title of Act

An act providing for the transfer of authority of state-owned motor vehicles to the highway commission; providing for the establishment of a state motor pool for maintenance and storage; providing

for regulation and use of vehicles; providing for lettering and identification; providing for records; providing for exceptions; establishing a penalty and repealing sections 53-501, 53-503, 53-504, 53-505, 53-506, 53-507, 53-508 and 53-510, R. C. M. 1947, and sections 53-511, 53-512 and 53-513, R. C. M. 1947, enacted as Chapter 181, Laws of 1969.

#### Amendments

Prior to the 1974 amendments this section read: "The state highway commission is hereby constituted the custodian of all motor vehicles owned or leased by the state of Montana or its boards, commissions or agencies operated out of any areas or locations where five (5) or more state vehicles or three (3) or more state agencies are located."

**53-515. Rules—authority and enforcement.** The department of highways, motor pool division is hereby delegated the power and authority:

(1) to adopt and enforce reasonable rules governing the use and operation of all motor vehicles under control of the department of highways, motor pool division;

(2) to assign the use of all state-owned or leased motor vehicles under its control to state officers, departments, bureaus, institutions and commissions, or employees thereof;

(3) to charge the individual state agencies using the motor vehicles the actual costs for administration and their maintenance, service, storage and replacement.

**History:** En. Sec. 2, Ch. 320, L. 1971; amd. Sec. 174, Ch. 316, L. 1974; amd. Sec. 2, Ch. 355, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 316 and once by Ch. 355. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 316, Laws of 1974, substituted

"rules" for "rules and regulations"; substituted references to "department" for references to "state highway commission" and "commission"; and made minor changes in phraseology.

Chapter 355 substituted references to "department of highways, motor pool division" for references to "state highway commission" and "commission"; inserted the numerical subdivision designations; substituted "motor vehicles under control of the department of highways, motor pool division" for "motor vehicles used in the service in the state of Montana" in subdivision (1); and made minor changes in phraseology and punctuation.

**53-516. Seal on motor vehicles.** A motor vehicle owned by the state shall have a seal eight (8) inches in diameter placed upon the vehicle in accordance with the rules adopted by the department of highways, motor pool division.

**History:** En. Sec. 3, Ch. 320, L. 1971; amd. Sec. 175, Ch. 316, L. 1974; amd. Sec. 3, Ch. 355, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 316 and once by Ch. 355.



Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 316, Laws of 1974, substituted

"department of highways, motor pool division" for "highway commission" at the end of the section.

Chapter 355, Laws of 1974, substituted "department" for "highway commission" at the end of the section and made minor changes in phraseology.

**53-517. State car for state business only—compensation for driving personal vehicle.** A state officer or employee may not use a state-owned or leased motor vehicle for his own personal and private use, nor may he be compensated for driving his own motor vehicle unless that motor vehicle is used on state business.

**History:** En. Sec. 4, Ch. 320, L. 1971; amd. Sec. 176, Ch. 316, L. 1974; amd. Sec. 4, Ch. 355, L. 1974.

made a composite section embodying the changes made by both amendments.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 316 and once by Ch. 355. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has

#### Amendments

Chapter 316, Laws of 1974, made minor changes in phraseology.

Chapter 355, Laws of 1974, inserted "or leased motor" after "state-owned" and substituted "motor vehicle" for "vehicle" after "driving his own."

**53-518. Adoption of travel rules—contents—removal from office for violations.** The department of highways, motor pool division shall adopt travel rules providing:

(a) For filing an application for travel showing necessity for trips, points to be visited, approximate time of departure and return;

(b) For filing a report upon completion of the trip, showing actual points reached, mileage traveled and car cost record data;

(c) For recording in the car operating history record book all items of expense incurred in the purchase of gas, oil, repairs, labor, storage, or service; and,

(d) That a decal be affixed to the instrument panel of every state-owned vehicle with the following information contained on the decal:

Any officer or employee of the state government who uses or authorizes the use of any state-owned motor-propelled passenger carrying vehicle, or of any motor-propelled passenger carrying vehicle leased by the state government, for other than official purposes shall be summarily removed from office by the head of the department of establishment concerned.

**History:** En. Sec. 5, Ch. 320, L. 1971; amd. Sec. 177, Ch. 316, L. 1974; amd. Sec. 5, Ch. 355, L. 1974.

made a composite section embodying the changes made by both amendments.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 316 and once by Ch. 355. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has

#### Amendments

Chapter 316, Laws of 1974, substituted "travel rules" for "travel regulations" in the caption and in the introductory clause; substituted "department" for "state highway commission" in the introductory clause; and made minor changes in phraseology.

Chapter 355, Laws of 1974 substituted "department of highways, motor pool division" for "state highway commission" in the introductory clause.

**53-519. Requisitions for purchases—operating history records.** (1) All requisitions for motor vehicle purchases shall be submitted to the department of administration twice yearly, at the times that it specifies, and other requisitions for automobile purchases may not be accepted by it, unless the governor considers the purchase to be an emergency necessity.

(2) All motor vehicle operating history records for motor vehicles under control of the department of highways, motor pool division shall be entered in the department of highways, motor pool division. These records shall show the purchase price of the vehicle, and the items of expense incurred in the operation of the vehicle, including the expenses of gas, oil, repairs, labor, storage and service. A complete summary of the operating cost and history record of all state-owned or leased vehicles and trucks shall be prepared for each fiscal year.

**History:** En. Sec. 6, Ch. 320, L. 1971; amd. Sec. 178, Ch. 316, L. 1974; amd. Sec. 6, Ch. 355, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 316 and once by Ch. 355. Neither amendatory act mentioned or entirely incorporated the changes made by the other. The compiler resolved apparent conflicts in the amendatory acts in subsection (2) in favor of the amendment by Ch. 355 which was adopted later in the legislative session. Otherwise, a composite section embodying the changes made by both amendments has been made.

#### Amendments

Chapter 316, Laws of 1974, inserted the numerical subsection designations at the

beginning of the paragraphs; substituted references to "department of administration" in subsections (1) and (2) for references to "state controller"; and made minor changes in phraseology.

Chapter 355, Laws of 1974 substituted "motor vehicle purchases" for "automobile purchases" in subsection (1); substituted "motor vehicle operating history" for "automobile operating history" in subsection (2); inserted "for motor vehicles under control of the department of highways, motor pool division" after "records" in the first sentence of subsection (2); substituted "department of highways, motor pool division" for "office of the state controller" at the end of the first sentence in subsection (2); and inserted "or leased" after "state-owned" in the last sentence of subsection (2).

**53-519.1. Transfer of vehicles to other agency.** All motor vehicles in the custody of the department of highways, motor pool division, which are not placed under custody of the department of highways, motor pool division, by section 53-514 shall be equitably transferred to the custody of those agencies that have need of vehicles as demonstrated by use records.

**History:** En. 53-519.1 by Sec. 7, Ch. 355, L. 1974.

#### Title of Act

An act to amend sections 53-514, 53-515, 53-516, 53-517, 53-518, 53-519, 59-801, and 59-802, R. C. M. 1947; to require the transfer of title of certain state-owned vehicles to the name of the state of Montana; to constitute the department

of highways, motor pool division, as custodian of certain motor vehicles; to constitute custody of certain motor vehicles in the user agencies; to provide that state agencies pay for all actual costs of using motor vehicles; to regulate the use of privately owned vehicles by state employees; and to require the department of highways to maintain motor vehicle operating history records.

**53-519.2. Regulations for interagency rental.** The department of highways, motor pool division, shall promulgate regulations for inter-

agency rental of motor vehicles. These regulations shall govern the manner in which vehicles in the custody of one agency and for a time not required for use by that agency can be rented by another agency for its use. These regulations shall also establish the charge for vehicle rental which may include reimbursement of actual costs for administration, maintenance, service, operation, storage and replacement costs of these vehicles.

**History:** En. 53-519.2 by Sec. 8, Ch. 355, L. 1974.

**53-519.3. Regulations concerning use of vehicles.** The department of highways shall establish reasonable rules and regulations governing:

(a) Employee responsibility for misuse and negligent damage of state-owned or leased vehicles;

(b) Determination of when the use of privately owned vehicles on state business may be justified as in the best interest of the state;

(c) Procedures for determining when a state vehicle is not available for use.

**History:** En. 53-519.3 by Sec. 11, Ch. 355, L. 1974.

**53-520. Certain motor vehicles exempted.** This chapter does not apply to a motor vehicle used in the service of the governor, the attorney general or the highway patrol.

**History:** En. Sec. 7, Ch. 320, L. 1971; amd. Sec. 179, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "chapter" for "provisions of this act"; and made minor changes in phraseology.

**53-521. Violation a misdemeanor—dismissal.** A state officer or employee violating this chapter is guilty of a misdemeanor, and upon conviction shall be dismissed from state employment.

**History:** En. Sec. 8, Ch. 320, L. 1971; amd. Sec. 180, Ch. 316, L. 1974.

#### Repealing Clause

Section 9 of Ch. 320, Laws 1971 read "Sections 53-501, 53-503, 53-504, 53-505, 53-506, 53-507, 53-508 and 53-510, R. C. M. 1947, and sections 53-511, 53-512 and 53-513, R. C. M. 1947, enacted as chapter 181, Laws of 1969, are hereby repealed."

#### Amendments

The 1974 amendment substituted "chapter" for "provisions of this act"; and made minor changes in phraseology.

## CHAPTER 6—ADDITIONAL FEES OR TAXES ON MOTOR VEHICLES

Section 53-620. [Transferred.]

53-624. [Transferred.]

53-626, 53-627. [Transferred.]

53-632, 53-633. [Transferred.]

53-638.1. [Transferred.]

53-639.1. Special mobile equipment—exemption from registration and payment of fees and charges—identification plate—application—fee—publicly owned special mobile equipment.

53-639.2. Exemptions of vehicles not capable of operation on highways.

53-640. Issuance of identification plate and receipt—contents.

53-642. "Special mobile equipment" defined.

53-644. Camper—definition.



- 53-645. Tax-paid decal required on camper—application for decal—fee—issuance.  
 53-646. Violation as misdemeanor—fine.  
 53-647. Annual application for decals—grace period.

**53-615 to 53-619. Repealed.****Repeal**

These sections (Secs. 1 to 5, Ch. 219, L. 1951; Sec. 1, Ch. 139, L. 1953; Sec. 1, Ch. 89, L. 1955; Sec. 1, Ch. 175, L. 1955; Sec. 1, Ch. 177, L. 1955; Sec. 1, Ch. 251, L. 1955; Sec. 1, Ch. 258, L. 1955; Sec. 1, Ch. 103, L. 1959; Sec. 1, Ch. 211, L. 1959; Sec. 1, Ch. 193, L. 1961; Sec. 1, Ch. 150,

L. 1963; Sec. 1, Ch. 195, L. 1965; Sec. 1, Ch. 224, L. 1965), relating to additional fees and taxes payable for vehicles, were repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-3201, 32-3301 to 32-3310, 32-3312, 32-3314, and 32-3315.

**53-620. [Transferred.]****Compiler's Notes**

Section 181, Ch. 316, Laws of 1974 renumbered this section as sec. 32-3205.1.

**53-621 to 53-623. Repealed.****Repeal**

These sections (Secs. 7 to 9, Ch. 219, L. 1951; Sec. 1, Ch. 226, L. 1959), relating to

fees and penalties for trucks and trailers, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

**53-624. [Transferred.]****Compiler's Notes**

Section 182, Ch. 316, Laws of 1974 renumbered this section as sec. 32-3318.

**53-625. Repealed.****Repeal**

This section (Sec. 11, Ch. 219, L. 1951; Sec. 1, Ch. 231, L. 1957), relating to re-

ciprocity and fleet registration, was repealed by Sec. 27, Ch. 206, Laws 1963.

**53-626, 53-627. [Transferred.]****Compiler's Notes**

Sections 183 and 184, Ch. 316, Laws of

1974 renumbered these sections as 32-3319 and 32-3320.

**53-628 to 53-631. Repealed.****Repeal**

These sections (Secs. 14, 15, Ch. 219, L. 1951; Secs. 1, 2, Ch. 133, L. 1953; Sec. 1, Ch. 104, L. 1957), relating to markings of

trucks and buses, municipal taxes, and to drive-away and tow-away transporters, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

**53-632, 53-633. [Transferred.]****Compiler's Notes**

Sections 185 and 186, Ch. 316, Laws

of 1974 renumbered these sections as secs. 32-3407 and 32-3408.

**53-634 to 53-638. Repealed.****Repeal**

These sections (Secs. 5 to 9, Ch. 133, L. 1953), relating to drive-away and tow-

away transporters, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

**53-638.1. [Transferred.]****Compiler's Notes**

Section 187, Ch. 316, Laws of 1974  
renumbered this section as sec. 53-639.2.

**53-639. Repealed.****Repeal**

This section (Sec. 1, Ch. 183, L. 1955),  
relating to special mobile equipment, was

repealed by Sec. 12-109, Ch. 197, Laws  
1965, effective December 31, 1966.

**53-639.1. Special mobile equipment—exemption from registration and payment of fees and charges—identification plate—application—fee—publicly owned special mobile equipment.** (1) A person, firm, partnership, or corporation who owns, leases, or rents special mobile equipment as defined in section 53-642 and occasionally moves that equipment on, over, or across the highways of the state, is not subject to registration of that equipment or required to pay the fees and charges provided for in chapters 32 through 35 of Title 32. Prior to movement on the highways, however, each piece of equipment shall display an equipment identification plate or a dealers' license plate attached to the equipment.

(2) Annual application for the identification plate shall be made to the county treasurer before any piece of equipment is moved on the highways. Application shall be made on a form furnished by the department of justice, together with the payment of a fee of five dollars (\$5). The equipment for which a special mobile equipment plate is sought, is subject to the assessment of personal property taxes either on the date application is made for the plate, if that date falls between the first day of January and the first Monday of March, or on the first Monday of March. The personal property taxes assessed against the special mobile equipment must be paid before the issuance of a special mobile equipment plate. The fees collected under this section belong to the county road fund.

(3) The identification plate expires on March 31 of each year.

(4) Publicly owned special mobile equipment, and implements of husbandry used exclusively by an owner in the conduct of his own farming operations, are exempt from this section.

**History:** En. Sec. 7-207, Ch. 197, L. 1965; amd. Sec. 1, Ch. 232, L. 1967; amd. Sec. 1, Ch. 244, L. 1971; Sec. 32-3707, R. C. M. 1947; amd. and redes. 53-639.1 by Sec. 124, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment renumbered this section; substituted "department of justice" in subsection (2) for "registrar of motor vehicles"; and made minor changes in phraseology, punctuation and style.

**53-639.2. Exemptions of vehicles not capable of operation on highways.** Track-type tractors, other track mounted machinery and equipment, road rollers, and other similar equipment and machinery which cannot be self-propelled or towed upon the highways of this state and which must be transported by some type of hauling unit, are not subject to this title or chapters 32 and 33 of Title 32.

**History:** En. Sec. 3, Ch. 150, L. 1963; Sec. 53-638.1, R. C. M. 1947; amd. and redes. 53-639.2 by Sec. 187, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment renumbered this section; substituted "this title or chapter

32 and 33 of Title 32" at the end of the section for "any of the terms and provisions of Title 53, R. C. M. 1947"; and made minor changes in phraseology.

**53-640. Issuance of identification plate and receipt—contents.** The county treasurer shall issue to an applicant for an equipment identification plate a single metal plate with a distinguishing number and a receipt for the fee collected, which receipt shall contain the name and address of the applicant, the number of the plate issued, the serial number of the equipment and a brief description of that equipment.

**History:** En. Sec. 2, Ch. 183, L. 1955; amd. Sec. 188, Ch. 316, L. 1974. equipment identification plate" after "applicant"; and made minor changes in phraseology.

**Amendments**

The 1974 amendment inserted "for an

**53-642. "Special mobile equipment" defined.** "Special mobile equipment" means every vehicle which is not designed and used primarily for the transportation of persons or property on a public highway and which is operated or moved over the highway from construction project to construction project, and not removed from the confines and haul roads thereof, except for movement from construction project to storage yard, from storage yard to construction project, or from storage yard or construction project to point of repair or maintenance and return. Special mobile equipment includes, but is not limited to portable air compressors, air drills, asphalt spreaders, gravel crushing equipment and hot plant equipment, buckets, belt and front-end loaders, track laying tractors, ditchers, leveling graders, finishing machines, motor graders, paving mixers, earth moving scrapers and carry-alls, lighting, generating and power plants, welders, pumps, power shovels and draglines, cranes, crane mounted heel-boom log loaders, fork-lift trucks, lumber carriers, bunk-houses, tool houses, shop cars, oil distributors, scales and scale houses, and conveyors. It also includes self-propelled tractor-drawn earth moving equipment, dump trucks and tractor-dump trailer combinations which, because of excess width, height, length, or unladen weight, cannot be moved over a public highway without a permit as provided in sections 32-1127.1 through 32-1127.10, and which are operated unladen except within the boundaries of the project limits, as defined by the contract, and adjacent haul roads. However, the term "special mobile equipment" does not include a vehicle such as a truck, truck-tractor, trailer, semi-trailer, house trailer, or house car, designed for the transportation of persons or property.

**History:** En. Sec. 4, Ch. 183, L. 1955; amd. Sec. 2, Ch. 150, L. 1963; amd. Sec. 189, Ch. 316, L. 1974. wrote this section. For previous version, see parent volume.

**Amendments**

The 1963 amendment substantially re- The 1974 amendment substituted "as provided in section 32-1127.1 through 32-1127.10" in the third sentence for "section 32-1127, R. C. M. 1947"; and made minor changes in phraseology.

**53-643. Repealed.**

**Repeal**

This section (Sec. 5, Ch. 183, L. 1955), relating to identification plates for special mobile equipment, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.



**53-644. Camper—definition.** The term camper as used in this act includes but is not limited to truck camper, chassis mounted camper, cab over, half cab over, non cab over, topper, telescopic, and telescopic cab over.

**History:** En. Sec. 1, Ch. 414, L. 1973.

**Title of Act**

An act requiring each camper to be registered and to display identifying num-

ber and decal; charging each camper owner a one dollar (\$1) fee for registration of each camper; amending section 84-406, R. C. M. 1947; and providing an effective date and penalty.

**53-645. Tax-paid decal required on camper—application for decal—fee—issuance.** No camper, subject to taxation in Montana, shall be operated by any person in the state of Montana on the public highways or streets unless there is displayed in a conspicuous place thereon a decal as visual proof that Montana personal property taxes have been paid thereon for the current year. Application for the issuance of such tax-paid decal shall be made to the department of revenue or the county treasurer upon forms to be furnished for this purpose, which may be obtained from the department or at the county assessor's office in the county wherein the owner resides, and is to provide for substantially the following information: name of owner, address, name of manufacturer, model number, make, year of manufacture, statement evidencing assessment, payment of property tax, and such other information as the department may require. Said application shall be signed by the county treasurer and transmitted by him to the department accompanied by a fee of one dollar (\$1). Upon receipt of the application in approved form the department or county treasurer shall issue to the applicant a decal in the style and design prescribed by the department and of a different color than the preceding year, numbered numerically.

**History:** En. Sec. 2, Ch. 414, L. 1973.

**53-646. Violation as misdemeanor—fine.** Operation of a camper in violation of this act is a misdemeanor punishable by a fine not to exceed fifty dollars (\$50).

**History:** En. Sec. 3, Ch. 414, L. 1973.

**53-647. Annual application for decals—grace period.** Application must be made to the department of revenue or county treasurer for the issuance of tax-paid decals annually. Campers may be operated between January 1 and February 15 in each year without displaying the current year's decal.

**History:** En. Sec. 4, Ch. 414, L. 1973.

## CHAPTER 7—RECIPROCITY AND PROPORTIONAL REGISTRATION

- Section 53-701. Declaration of policy.
- 53-702. Definitions.
- 53-704. Authority of department of highways.
- 53-705. Authority for reciprocity agreements, provisions, reciprocity standards.
- 53-706. Base state registration reciprocity.
- 53-707. Proportional registration of fleet vehicles.
- 53-708. Declarations of extent of reciprocity.

- 53-709. Extension of reciprocal privileges to lessees authorized.
- 53-710. Automatic reciprocity.
- 53-711. Proportional registration not exclusive.
- 53-712. Proportional registration of fleet vehicles, application, fee-formula and payment.
- 53-713. Registration and identification of proportionally registered vehicles, effect of such registration.
- 53-714. Proportional registration cannot be in a single jurisdiction.
- 53-715. Registration of additional fleet vehicles.
- 53-716. Withdrawal of fleet vehicles, credits and accounting.
- 53-717. New fleet—estimated mileage.
- 53-718. Fleet registration may be denied.
- 53-719. Preservation of proportional registration records.
- 53-720. Relation to other state laws.
- 53-721. Suspension of reciprocity benefits.
- 53-722. Agreements to be written, filed and available for distribution.
- 53-723. Reciprocity agreements in effect at time of act.
- 53-724. Act part of and supplement to motor vehicle registration law.

**53-701. Declaration of policy.** It is the policy of this state to promote and encourage the fullest possible use of its highway system by authorizing the making and execution of motor vehicle reciprocal or proportional registration agreements, arrangements and declarations with other states, provinces, territories and countries with respect to vehicles registered in this and such other states, provinces, territories and countries thus contributing to the economic and social development and growth of this state.

**History:** En. Sec. 1, Ch. 206, L. 1963.

**Title of Act**

An act relating to motor vehicles; creating, amending and repealing laws on motor vehicle reciprocal or proportional registration agreements, arrangements and declarations with other states, provinces, territories and countries, so as to conform substantially with the model reciprocity and proration draft proposed by the national committee on uniform traffic laws

and ordinances; providing a declaration of policy, definitions, creation of Montana motor vehicle reciprocity board, and authority of said board; and providing other related sections for carrying out the policy, construction and administration of this act; providing a severability clause; amending section 53-129, R.C.M., 1947, as amended; repealing section 53-625, R.C.M., 1947, as amended; providing an effective date.

**53-702. Definitions.** As used in this act:

(1) "Commercial vehicle" means a vehicle which is operated in more than one (1) state and used for the transportation of persons for hire, compensation or profit, or designed or used primarily for the transportation of property.

(2) "Jurisdiction" means and includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country and a state or province of a foreign country.

(3) "Owner" means a person who holds the legal title to a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner shall be deemed to be such person in whom is vested right of possession or control.

(4) "Legal residence," means a jurisdiction where the person lives or conducts his business. This residence need not be coupled with the intent to live or conduct the business there on a permanent basis. The use of the word "residence" in this act shall be confined to the definition given, and shall not be confused with the word "domicile." This definition of "residence" further recognizes that a person may have several residences, but only one (1) domicile.

(5) (a) "Properly registered," as applied to place of registration means:

(i) The jurisdiction where the person registering the vehicle has his legal residence, or

(ii) In the case of a commercial vehicle, the jurisdiction in which it is registered if the commercial enterprise in which the vehicle is used has a place of business therein and, if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated or otherwise controlled in or from the place of business and, the vehicle has been assigned to the place of business, or

(iii) In the case of a commercial vehicle, the jurisdiction where, because of an agreement or arrangement between two (2) or more jurisdictions, or pursuant to a declaration, the vehicle has been registered as required by that jurisdiction.

(b) In case of doubt or dispute as to the proper place of registration of a vehicle, the board of highway appeals shall make the final determination, but in making the determination, the board may confer with departments of the other jurisdictions affected.

(6) "Fleet" means two (2) or more commercial vehicles.

(7) "Person," for purposes of this act, means every natural person, firm, copartnership, association, or corporation.

(8) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(9) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(10) "Preceding year" means a period of twelve (12) consecutive months fixed by the department of highways, which period shall be within sixteen (16) months immediately preceding the commencement of the registration or license year for which proportional registration is sought; the department in fixing the period shall make it conform to the terms, conditions and requirements of any applicable agreement or arrangements for the proportional registration of vehicles.

History: En. Sec. 2, Ch. 206, L. 1963; amd. Sec. 190, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "board of highway appeals" in subdivision (5) (b)

for "Montana motor vehicle reciprocity board"; substituted "department of highways" and "department" in subsection (10) for "Montana motor vehicle reciprocity board"; and made minor changes in phraseology and style.



**53-703. Repealed.****Repeal**

Section 53-703 (Sec. 3, Ch. 206, L. 1963; Sec. 17, Ch. 391, L. 1973), relating to

creation of the Montana motor vehicle reciprocity board, was repealed by Sec. 209, Ch. 316, Laws of 1974.

**53-704. Authority of department of highways.** The department of highways may execute or make arrangements, agreements or declarations to carry out this chapter.

**History:** En. Sec. 4, Ch. 206, L. 1963; amd. Sec. 191, Ch. 316, L. 1974.

partment of highways" for "Montana motor vehicle reciprocity board" and "this chapter" for "this act."

**Amendments**

The 1974 amendment substituted "de-

**53-705. Authority for reciprocity agreements, provisions, reciprocity standards.** The department may enter into an agreement or arrangement with the duly authorized representatives of other jurisdictions, granting to vehicles or to owners of vehicles which are properly registered or licensed in those jurisdictions, and for which evidence of compliance is supplied, benefits, privileges and exemptions from payment, wholly or partially, of any taxes, fees, or other charges imposed upon those vehicles or owners with respect to the operation or ownership of the vehicles under the laws of this state. The agreement or arrangement shall provide that vehicles properly registered or licensed in this state, when operated upon highways of those other jurisdictions, shall receive exemptions, benefits and privileges of a similar kind or to a similar degree as are extended to vehicles properly registered or licensed in the jurisdiction when operated in this state. The agreement or arrangement shall, in the judgment of the department, be in the best interests and fair and equitable to this state and its citizens determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce.

**History:** En. Sec. 5, Ch. 206, L. 1963; amd. Sec. 192, Ch. 316, L. 1974.

partment" for "Montana motor vehicle reciprocity board" in the first and last sentences; and made minor changes in phraseology.

**Amendments**

The 1974 amendment substituted "de-

**53-706. Base state registration reciprocity.** An agreement or arrangement entered into, or a declaration issued under the authority of this act may contain provisions authorizing the registration or licensing in another jurisdiction of vehicles located in or operated from a base in such other jurisdiction which vehicles otherwise would be required to be registered or licensed in this state; and in such event the exemptions, benefits and privileges extended by such agreement, arrangement or declaration shall apply to such vehicles, when properly licensed or registered in such base jurisdiction.

**History:** En. Sec. 6, Ch. 206, L. 1963.

**53-707. Proportional registration of fleet vehicles.** If a jurisdiction permits or requires the licensing of fleets of vehicles in interstate or combined interstate and intrastate commerce and payment of registration

fees, license fees, taxes or other fixed fees on those vehicles on an apportionment basis commensurate with and determined by the miles traveled on and the use made of the jurisdiction's highways, as compared with the miles traveled on and the use made of other jurisdiction's highways or any other equitable basis of apportionment, and exempts vehicles registered in any other jurisdiction under this apportionment basis from the requirements of full payment of its own registration, license fees, taxes or other fixed fees, then the department may, by agreement, adopt such exemption with respect to vehicles of these fleets, whether owned by residents or nonresidents of this state and regardless of where based. An agreement, under the terms, conditions or restrictions the department considers proper, may provide that owners of vehicles operated in interstate or combined interstate and intrastate commerce in this state be permitted to pay registration, license fees, taxes or other fixed fees on an apportionment basis, commensurate with and determined by the miles traveled on and the use made of the highways of this state as compared with the use made of the highways of other jurisdictions or any other equitable basis of apportionment. This agreement may not authorize, nor be construed to authorize a vehicle so registered to be operated in intrastate commerce in this state unless the owner of the vehicle has been granted intrastate authority or rights by the public service commission, if a grant is otherwise required by law. The department may adopt rules it considers necessary to carry out and administer this section, and the registration of fleet vehicles under this chapter is subject to the rights, terms and conditions granted by or contained in any applicable agreement, arrangement or declaration made by the department.

**History:** En. Sec. 7, Ch. 206, L. 1963; amd. Sec. 1, Ch. 88, L. 1965; amd. Sec. 193, Ch. 316, L. 1974.

#### Amendments

The 1965 amendment substituted "license fees, taxes" for "license taxes" near the beginning of the section and "license fees, taxes" for "license" following "registration" in two places.

The 1974 amendment substituted "de-

partment" for "Montana motor vehicle reciprocity board" throughout the section; substituted "public service commission" for "Montana railroad and public service commission" in the third sentence; substituted "this section" for "this subsection" in the last sentence; substituted "this chapter" for "this act" in the last sentence; and made minor changes in phraseology and punctuation.

**53-708. Declarations of extent of reciprocity.** In the absence of an agreement or arrangement with another jurisdiction, the department may examine the laws and requirements of the jurisdiction and declare the extent and nature of exemptions, benefits, and privileges to be extended to vehicles properly registered or licensed in the other jurisdiction, or to the owners of the vehicles, which are, in the judgment of the department in the best interests and fair and equitable to this state and its citizens determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce.

**History:** En. Sec. 8, Ch. 206, L. 1963; amd. Sec. 194, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "Montana motor vehicle reciprocity board"; and made minor changes in phraseology and punctuation.

**53-709. Extension of reciprocal privileges to lessees authorized.** An agreement or arrangement entered into, or a declaration issued under the authority of this act, may contain provisions under which a leased vehicle properly registered by the lessor thereof may be entitled, subject to terms and conditions stated therein, to the exemptions, benefits and privileges extended by such agreement, arrangement or declaration.

**History:** En. Sec. 9, Ch. 206, L. 1963.

**53-710. Automatic reciprocity.** On and after the effective date of this act, if no agreement, arrangement or declaration is in effect with respect to another jurisdiction as authorized by this act, any vehicle properly registered or licensed in such other jurisdiction, and for which evidence of compliance is supplied, shall receive, when operated in this state, the same exemptions, benefits and privileges granted by such other jurisdictions to vehicles properly registered in this state. Reciprocity extended under this subsection shall apply to commercial vehicles only when engaged exclusively in interstate commerce.

**History:** En. Sec. 10, Ch. 206, L. 1963.

**53-711. Proportional registration not exclusive.** Nothing contained in this act relating to proportional registration of fleet vehicles shall be construed as requiring any vehicle to be proportionally registered if it is otherwise registered in this state for the operation in which it is engaged, including but not by way of limitation, regular registration, temporary registration, or trip permit or registration.

**History:** En. Sec. 11, Ch. 206, L. 1963.

**53-712. Proportional registration of fleet vehicles, application, fee-formula and payment.** (1) An owner engaged in operating one (1) or more fleets may, instead of registration of vehicles under other sections of this title, register and license each fleet for operation in this state by filing an application with the department which shall contain the following information, and other information pertinent to vehicle registration the department requires:

(a) Total fleet miles. This shall be the total number of miles operated in all jurisdictions during the preceding year by the vehicles in the fleet during the year.

(b) In-state miles. This shall be the total number of miles operated in this state during the preceding year by the vehicles in the fleet during the year.

(c) A description and identification of each vehicle of the fleet which is to be operated in this state during the registration year for which proportional fleet registration is requested.

(2) The application for each fleet shall be accompanied by a fee payment computed as follows:

(a) Divide in-state miles by total fleet miles.

(b) Determine the total amount necessary to register each vehicle in the fleet for which registration is requested, based on the regular an-



nual registration fees prescribed by section 53-122, Title 32, chapter 32 and chapter 33 and the property taxes which are due on the fleet.

(c) Multiply the sum obtained under subsection (2) (b) by the fraction obtained under subsection (2) (a).

**History:** En. Sec. 12, Ch. 206, L. 1963; amd. Sec. 2, Ch. 88, L. 1965; amd. Sec. 195, Ch. 316, L. 1974.

#### Compiler's Notes

Section 53-615, referred to in subsection (2) (b) of this section, was repealed by Sec. 12-109, Ch. 197, Laws 1965.

#### Amendments

The 1965 amendment added "and such

property taxes if any be due thereon" at the end of paragraph (2) (b).

The 1974 amendment substituted "department" for "Montana highway commission" in the first paragraph; substituted "prescribed by section 53-122, Title 32, chapter 32 and chapter 33" in subdivision (2)(b) for "prescribed by section 53-122, R. C. M., 1947, as amended, and section 53-615, R. C. M., 1947, as amended"; and made minor changes in phraseology and punctuation.

**53-713. Registration and identification of proportionally registered vehicles, effect of such registration.** (1) The department shall register the vehicles so described and issue a license plate or plates, or a distinctive sticker, or other suitable identification device, for each vehicle described in the application upon payment of the appropriate fees, and property taxes as provided by law, for the application and for the stickers or devices issued. A fee of two dollars (\$2) shall be paid for each license plate, sticker or device issued for each proportionally registered vehicle. A registration card shall be issued for each proportionally registered vehicle. The registration card shall, in addition to other information required by Title 53, bear upon its face the number of the license, sticker or other device issued for the proportionally registered vehicle and shall be carried in the vehicle at all times.

(2) Fleet vehicles so registered and identified shall be deemed fully licensed and registered in this state for any type of movement or operation, except that, in those instances in which a grant of authority is required for intrastate movement or operation, the vehicle may not be operated in intrastate commerce in this state unless the owner has been granted intrastate authority by the public service commission and unless the vehicle is being operated in conformity with that authority.

**History:** En. Sec. 13, Ch. 206, L. 1963; amd. Sec. 3, Ch. 88, L. 1965; amd. Sec. 196, Ch. 316, L. 1974.

#### Amendments

The 1965 amendment inserted "and property taxes as provided by law" in the first sentence of subsection (1).

The 1974 amendment substituted "department" in subsection (1) for "Montana highway commission"; substituted "public

service commission" in subsection (2) for "Montana railroad and public service commission"; and made minor changes in phraseology.

#### Effective Date

Section 4 of Ch. 88, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

**53-714. Proportional registration cannot be in a single jurisdiction.** The right to the privilege and benefits of proportional registration of fleet vehicles extended by this act, or by any contract, agreement, arrangement or declaration made under the authority of this act, shall be subject to the condition that each fleet vehicle proportionally registered under the

authority of this act shall also be proportionally or otherwise properly registered in at least one other jurisdiction during the period for which it is proportionally registered in this state.

History: En. Sec. 14, Ch. 206, L. 1963.

**53-715. Registration of additional fleet vehicles.** Vehicles acquired by the owner after the commencement of the registration year and subsequently added to a proportionally registered fleet shall be proportionally registered by applying the mileage percentage used in the original application for such fleet for such registration period to the regular registration fees due with respect to such vehicle for the remainder of the registration year.

History: En. Sec. 15, Ch. 206, L. 1963.

**53-716. Withdrawal of fleet vehicles, credits and accounting.** If a vehicle is withdrawn from a proportionally registered fleet during the period for which it is registered, the owner of the fleet shall notify the department of that fact on forms prescribed by the department. The department may require the owner to surrender proportional registration cards and other identification devices which have been issued with respect to that vehicle. If a vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold or otherwise completely removed from the service of the registrant, the unused portion of the gross vehicle weight fees paid with respect to that vehicle shall be credited to the proportional registration account of the owner. This unused portion shall equal the amount paid with respect to the vehicle when it was first proportionally registered in the registration year, reduced by  $\frac{1}{12}$  of the total annual gross vehicle weight fee of the vehicle for each calendar month and fraction thereof elapsing between the first day of the month of the current year in which the vehicle was registered and the date the notice of withdrawal is received by the department. This credit shall be applied against liability for subsequent additions to be prorated during the registration year or for additional fees due upon audit under section 53-719. If a credit is less than five dollars (\$5.00), it may not be made or entered. In no event may the amount be credited against fees other than those for the registration year, nor may any amount be subject to refund.

History: En. Sec. 16, Ch. 206, L. 1963; amd. Sec. 197, Ch. 316, L. 1974.

#### Amendments

The 1974 amendment substituted "notify the department of that fact on forms prescribed by the department" in the first sentence for "notify the Montana highway

commission on appropriate forms to be prescribed by the Montana motor vehicle reciprocity board"; substituted "department" in the second and fourth sentences for "Montana highway commission"; and made minor changes in phraseology, punctuation and style.

**53-717. New fleet—estimated mileage.** The initial application for proportional registration of a fleet shall state the mileage data with respect to the fleet for the preceding year in this and other jurisdictions. If operations were not conducted with this fleet during the preceding year, the application shall contain a full statement of the proposed method

of operation and estimates of annual mileage in this state and other jurisdictions. The department shall determine the in-state and total fleet miles to be used in computing the fee payment for the fleet. The department may evaluate and adjust the estimate in the application if it is not satisfied as to the correctness of the estimate.

**History:** En. Sec. 17, Ch. 206, L. 1963; amd. Sec. 198, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment substituted "de-

partment" in the third and fourth sentences for "Montana highway commission"; and made minor changes in phraseology.

**53-718. Fleet registration may be denied.** The department may refuse to accept proportional registration applications for the registration of vehicles based in, or owned by residents of, another jurisdiction if the department finds that the other jurisdiction does not grant similar registration privileges to fleet vehicles based in or owned by residents of this state.

**History:** En. Sec. 18, Ch. 206, L. 1963; amd. Sec. 199, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment substituted "department" for "Montana highway com-

mission" at the beginning of the section; substituted "if the department finds" for "if the Montana motor vehicle reciprocity board finds" near the middle of the section; and made a minor change in phraseology.

**53-719. Preservation of proportional registration records.** An owner whose application for proportional registration has been accepted shall preserve the records on which the application is based for a period of four (4) years following the year or period upon which the application is based. Upon request of the department, the owner shall make these records available to the department for audit as to accuracy of computations and payments, or pay the reasonable costs of an audit at the owner's home office by an appointed representative of the department. The department may make arrangements with agencies of other jurisdictions administering motor vehicle registration laws for joint audits of the owner.

**History:** En. Sec. 19, Ch. 206, L. 1963; amd. Sec. 200, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment substituted "de-

ment" for "Montana highway commission" throughout the section; and made minor changes in phraseology.

**53-720. Relation to other state laws.** The provisions of this act shall constitute complete authority for the registration of fleet vehicles upon a proportional registration basis without reference to or application of any other statutes of this state except as in this section expressly provided.

**History:** En. Sec. 20, Ch. 206, L. 1963.

**53-721. Suspension of reciprocity benefits.** Agreements, arrangements or declarations made under this chapter may include provisions authorizing the department to suspend or cancel the exemptions, benefits or privileges granted thereunder to a person who violates any of the conditions or terms of the agreements, arrangements or declarations or who



violates the laws of this state relating to motor vehicles, or rules lawfully adopted thereunder.

**History:** En. Sec. 21, Ch. 206, L. 1963; amd. Sec. 201, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment substituted "this

chapter" for "this act"; substituted "department" for "Montana highway commission"; and made minor changes in phraseology.

**53-722. Agreements to be written, filed and available for distribution.**

All agreements, arrangements or declarations or amendments thereto shall be in writing and shall be filed with the department, and the department shall provide copies for public distribution upon request.

**History:** En. Sec. 22, Ch. 206, L. 1963; amd. Sec. 202, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment substituted "de-

partment" for "secretary of the Montana motor vehicle reciprocity board" and made minor changes in phraseology.

**53-723. Reciprocity agreements in effect at time of act.** All reciprocity and proportional registration agreements, arrangements and declarations relating to vehicles, in force and effect at the time this act becomes effective, shall continue in force and effect until specifically amended or revoked as provided by law or by such agreements or arrangements.

**History:** En. Sec. 23, Ch. 206, L. 1963.

**53-724. Act part of and supplement to motor vehicle registration law.** This act is supplemental to the motor vehicle registration law of this state.

**History:** En. Sec. 24, Ch. 206, L. 1963; amd. Sec. 203, Ch. 316, L. 1974.

**Amendments**

The 1974 amendment deleted a clause making this act part of Title 53 and made minor changes in phraseology.

**Separability Clause**

Section 25 of Ch. 206, Laws 1963 read "Severability. If any phrase, clause, subsection or section of this act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act with-

out the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid."

**Repealing Clause**

Section 27 of Ch. 206, Laws 1963 read "Section 53-625, R.C.M., 1947, as amended, is repealed."

**Effective Date**

Section 28 of Ch. 206, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 7, 1963.

**CHAPTER 8—MARKINGS ON TRUCKS AND HEAVY VEHICLES**

**Section 53-801. Owner's name and certificate number to be displayed on heavy vehicles—specifications.**

**53-802. Dealers and manufacturers exempt.**

**53-803. Penalty for violations.**

**53-801. Owner's name and certificate number to be displayed on heavy vehicles—specifications.** No motor vehicle or combination of vehicles, except farm vehicles, having a gross weight of more than 10,000 pounds shall operate upon the highways of the state of Montana unless there shall be dis-

played on both sides of each vehicle operated under its own power, either alone or in combination, the name, or trade name and address or M.R.C. or I.C.C. certificate number of the person or corporation under whose jurisdiction the vehicle, or vehicles, is or are being operated.

The display of name must be in letters in sharp contrast to the background and size, shape, and color readily legible in daylight from a distance of fifty (50) feet while the vehicle is not in motion, and such display shall be kept and maintained in such manner as to remain so legible. The display may be accomplished either by painting the information on the vehicle or through the use of a decal or a removable device, so prepared as to otherwise meet the identification and legibility requirements of this act.

**History:** En. Sec. 1, Ch. 133, L. 1963.

**Title of Act**

An act to provide for the marking of

motor vehicles operating on the highways of the state of Montana, providing a penalty and providing an effective date.

**53-802. Dealers and manufacturers exempt.** This act shall not apply to motor vehicles being transported to dealers, from point of manufacture, or from one dealer to another, or when being demonstrated to a prospect, or delivered to a buyer from a dealer or a manufacturer.

**History:** En. Sec. 2, Ch. 133, L. 1963.

**53-803. Penalty for violations.** Any person convicted of violating this act shall be guilty of a misdemeanor and shall be punished for each offense by a fine of not more than one hundred dollars (\$100) or by imprisonment for not more than one (1) month, or both.

**History:** En. Sec. 3, Ch. 133, L. 1963.

**Effective Date**

Section 4 of Ch. 133 read "The effective date of this act is July 1, 1963."

## CHAPTER 9—REMOVAL AND SALE OF ABANDONED VEHICLES

Section 53-901.	Prohibition against parking or leaving vehicles on public or private property.
53-902.	Taking vehicle into custody.
53-903.	Notice to owner.
53-904.	Reclaiming vehicle.
53-905.	Sale of vehicle if not reclaimed.
53-906.	Certificate of sale.
53-907.	Issuing certificate of ownership.
53-908.	Transmitting return of sale and balance of proceeds.
53-909.	Penalty for violation and enforcement of provisions.

**53-901. Prohibition against parking or leaving vehicles on public or private property.** No vehicle shall be parked or left standing upon the right of way of any public highway for a period longer than forty-eight (48) hours, or upon a city street, any state, county or city property for a period longer than five (5) days.

**History:** En. Sec. 1, Ch. 288, L. 1967; amd. Sec. 1, Ch. 169, L. 1969.

**Title of Act**

An act to provide for the removal and disposal of abandoned motor vehicles and for related purposes.

**Amendments**

The 1969 amendment inserted "for a period longer than forty-eight (48) hours" after "public highway" and made minor changes in phraseology.

**53-902. Taking vehicle into custody.** (1) The following law enforcement agencies may take into custody any motor vehicle found abandoned for a period of forty-eight (48) hours or more on any public highway, or for a period of five (5) days or more on any city street, or public property.

(a) The Montana highway patrol if the vehicle is upon the right of way of any public highway other than county road.

(b) The sheriff of the county if the vehicle is upon the right of way of any county road or private property within the county.

(c) The city police if the vehicle is upon a city street within the city.

(2) The Montana highway patrol, sheriff of the county, or the city police may use its, or his personnel, equipment and facilities for the removal and preservation of the vehicle, or may hire other personnel, equipment and facilities for those purposes.

**History:** En. Sec. 2, Ch. 288, L. 1967; sentence of subsection (1) to reduce the abandonment period for vehicles found on public highways from five days to forty-eight hours.  
amd. Sec. 2, Ch. 169, L. 1969.

#### **Amendments**

The 1969 amendment revised the first

**53-903. Notice to owner.** (1) Within seventy-two (72) hours after any vehicle is removed and held by or at the direction of the Montana highway patrol or the city police, they shall notify the sheriff of the county in which the vehicle was located at the time it was taken into custody and the place where the vehicle is being held. In addition the Montana highway patrol or the city police shall furnish the sheriff a complete description of the vehicle to include year, make, model, serial number and license number, if available, any costs incurred to that date in the removal, preservation and custody of the vehicle, and any available information concerning its ownership.

(2) The sheriff shall make reasonable efforts to ascertain the name and address of the owner, lien holder, or person entitled to possession of the vehicle. If such name and address are ascertained, the sheriff shall notify such owner and lien holder or person of the location of the vehicle.

(a) If the vehicle is registered in the office of the registrar of motor vehicles of this state, notice shall be deemed given when a registered or certified letter addressed to the registered owner of the vehicle and lien holder, if any, at the latest address shown by the records in the office of the registrar, return receipt requested and postage prepaid thereon, is mailed at least thirty (30) days before the vehicle is sold as hereinafter provided.

(b) If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner; or if it is impossible to determine with reasonable certainty the identity and addresses of all lien holders, notice by one (1) publication in one (1) newspaper of general circulation in the county where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this act. Such notice by publication can contain multiple listings of abandoned vehicles. Any such notice shall be within the time require-



ments prescribed for notice by certified or registered mail and shall have the same contents required for a notice by certified or registered mail.

(3) A vehicle found by law enforcement officials to be a "junk vehicle" as defined by section 69-6801 and certified as having an appraised value of one hundred dollars (\$100) or less as determined by the county assessor in accordance with the rules and regulations of the department of revenue may be directly submitted for disposal in accordance with the provisions of chapter 69-68, upon a release given by the sheriff. In the release the sheriff shall include the following information: a description of the vehicle including year, make, model, serial number, and license number if available. A release provided by the sheriff under this section shall be transmitted to the motor vehicle wrecking facility and shall be considered by that facility to meet the requirements for records under section 69-6804. Vehicles described in this section may be submitted without notice and without a required holding period.

**History:** En. Sec. 3, Ch. 288, L. 1967;  
amd. Sec. 1, Ch. 53, L. 1974.

**Amendments**

• The 1974 amendment added subdivision (3).

**53-904. Reclaiming vehicle.** The owner, lien holder, or person entitled to possession of the vehicle may reclaim it at any time after it is taken into custody and before it is sold. He shall present to the sheriff of the county in which the vehicle was located at the time it was taken into custody, satisfactory proof of ownership or right to possession, and pay the costs and expenses incurred in the removal, preservation and custody of the vehicle. He shall not be required to pay storage charges for a period longer than ninety (90) days.

**History:** En. Sec. 4, Ch. 288, L. 1967.

**53-905. Sale of vehicle if not reclaimed.** (1) If a vehicle is not reclaimed as provided in the preceding section within thirty (30) days after notification by registered or certified mail or prescribed publication, the sheriff of the county in which it is located at the time it was taken into custody, shall sell it at public auction in the manner provided in sections 93-5824 through 93-5832 of the Revised Codes of Montana, 1947.

(2) After any vehicle has been so sold, the former owner or person entitled to possession has no further right, title, claim or interest in or to the vehicle.

**History:** En. Sec. 5, Ch. 288, L. 1967.

**53-906. Certificate of sale.** (1) When any vehicle is so sold, the sheriff at the time of the payment of the purchase price, shall execute a certificate of sale in duplicate. He shall deliver the original certificate to the purchaser and retain the copy.

(2) The certificate of sale shall contain the name and address of the purchaser, the date of sale, the consideration paid, a description of the vehicle and a stipulation that no warranty is made as to the condition or title of the vehicle.

**History:** En. Sec. 6, Ch. 288, L. 1967.

**53-907. Issuing certificate of ownership.** The registrar of motor vehicles shall issue a certificate of ownership upon presentation by the purchaser of the certificate of sale and payment of the fees required by law.

**History:** En. Sec. 7, Ch. 288, L. 1967.

**53-908. Transmitting return of sale and balance of proceeds. (1)** When any vehicle is sold as provided in section 5 [53-905], the sheriff shall transmit to the registrar of motor vehicles and to the county treasurer a return of sale setting forth a description of the vehicle, the purchase price, the name and address of the purchaser, the costs incurred in the sale and the costs and expenses incurred in the removal, preservation and custody of the vehicle.

(2) With the return of sale, the sheriff shall transmit to the county treasurer the balance of the proceeds of the sale after deducting the costs incurred in the sale, and the costs and expenses incurred in the removal, preservation and custody of the vehicle.

(3) Upon receipt of the return of sale and such balance the county treasurer shall file the return in his office and deposit the balance in the county road fund on all vehicles seized by the sheriff or highway patrol. The county treasurer shall transmit to the city treasurer the balance of the proceeds of the sale after deducting the costs incurred in the sale and the costs and expenses incurred in the removal, preservation and custody of vehicles seized by city police, and the city treasurer shall deposit such proceeds in the city street fund.

**History:** En. Sec. 8, Ch. 288, L. 1967.

**53-909. Penalty for violation and enforcement of provisions.** Any person or persons violating the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25), nor more than three hundred dollars (\$300), or by imprisonment in the county jail for not less than five (5) days, nor more than ninety (90) days, or by both fine and imprisonment.

**History:** En. Sec. 9, Ch. 288, L. 1967.

or void, the remainder of this act shall continue in full force and effect."

#### **Separability Clause**

Section 10 of Ch. 288, Laws 1967 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional

#### **Effective Date**

Section 11 of Ch. 288, Laws 1967 read "This act shall become effective from and after the 1st day of July, 1967."

## **CHAPTER 10—SNOWMOBILES**

- Section 53-1012. Definition of terms.  
 53-1013. Certificate of ownership.  
 53-1014. Transfer of title or interest.  
 53-1015. Lost or mutilated certificates.  
 53-1016. Exemptions.  
 53-1017. Report of stolen and recovered snowmobiles.  
 53-1018. Operation on public roads and streets.  
 53-1019. Unlawful operation on streets and highways.  
 53-1020. Other unlawful operation.  
 53-1021. Accidents involving snowmobiles.  
 53-1022. Enforcement.

- 53-1023. Penalties.
- 53-1024. Tax on snowmobiles—definitions.
- 53-1025. Display of tax-paid decals on snowmobiles required—application and issuance.
- 53-1025.1. Duplicate registration receipt or decal.
- 53-1026. Application to be made annually.
- 53-1027. Failure to display decal a misdemeanor—penalty.
- 53-1028. Officers authorized to enforce act.
- 53-1029. Issuance of dealer registration certificate.

**53-1001 to 53-1011. Repealed.**

**Repeal**

Sections 53-1001 to 53-1011 (Secs. 1 to 11, Ch. 326, L. 1969), relating to snow-

mobiles, were repealed by Sec. 13, Ch. 434, Laws 1971.

**53-1012. Definition of terms.** As used in this act, the following terms shall have the meanings indicated herein, unless the context otherwise clearly requires that another meaning be intended:

(a) "Person" includes an individual, partnership, association, corporation, and any other body or group of persons, whether incorporated or not, and regardless of the degree of formal organization.

(b) "Snowmobile" includes any self-propelled vehicle designed primarily for travel on snow or ice or natural terrain, which may be steered by wheels, skis, or runners, and which is not otherwise registered or licensed under the laws of the state of Montana.

(c) "Owner" shall include every person as defined herein, other than a lien holder or other person having a security interest only, holding record title to a snowmobile, and entitled to the use or possession thereof.

(d) "Operator" shall include every person who operates or is in actual physical control of the operation of a snowmobile.

(e) "Roadway" shall include only those portions of any highway, road or street improved, designed, or ordinarily used for travel or parking of motor vehicles.

(f) "Commission" means the fish and game commission of the state of Montana.

(g) "dbA" means sound pressure level measured on the "A" weight scale in decibels.

(h) "New snowmobile" means any snowmobile that has not been previously sold to an "owner" as defined in subsection (c).

**History:** En. Sec. 1, Ch. 434, L. 1971; amd. Sec. 1, Ch. 91, L. 1974.

**Title of Act**

An act establishing certificates of ownership and records of theft of snowmobiles, regulating operation of snowmobiles, providing exemptions, transfer of interest, prohibiting licensing and registra-

tion by political subdivisions, establishing enforcement, and providing penalties for any violation of this act; repealing sections 53-1001 through 53-1011, R.C.M., 1947.

**Amendments**

The 1974 amendment added subdivisions (g) and (h).

**53-1013. Certificate of ownership.** (1) No snowmobile shall be operated upon any public or private lands, trails, easements, lakes, rivers, streams, roadways or shoulders of roadways, streets or highways, unless it has first been registered with the registrar of motor vehicles in accordance with the laws of this state.



(2) Before such registration may be accomplished, the owner of a snowmobile shall make application for a certificate of ownership with the county treasurer of the county in which the owner resides, upon forms to be furnished for this purpose, and to provide for substantially the following information: Name of owner, residence by town and county, business or home mail address, name and address of lien holder, amount due under contract or lien, name and address of manufacturer, model number or name, serial number, and name and address of dealer or other person from whom acquired. The application shall be signed by at least one owner, or by a properly authorized officer or representative of the owner.

(3) If a snowmobile has previously been registered, under the provisions of this act, the application for registration must be accompanied by the immediately previous registration receipt, or by an affidavit upon a prescribed form, stating under oath that the vehicle had not been operated during the immediately previous year; provided, however, that this paragraph shall not be applicable to snowmobiles that are purchased as new and unused machines or that were operated when the provisions of this act were not in force and effect.

(4) Upon completion of the application of registration, in quintuplicate, on forms furnished by the registrar of motor vehicles, the county treasurer shall issue to the applicant two copies of the application marked "owner's certificate of registration," one of which shall be marked "file copy," and forward one copy and the application to the registrar of motor vehicles, who shall cause to be entered the information contained in the application upon the corresponding records of his office, and shall furnish the applicant a certificate of ownership, which shall contain the information found on the registration, and the owner shall, at all times, retain possession of the certificate of ownership, except when the same is being transmitted to and from the registrar of motor vehicles for endorsement or cancellation.

(5) Upon application for an owner's certificate of registration, a fee of two dollars (\$2) shall be paid to the county treasurer, one-half ( $\frac{1}{2}$ ) of which fee shall be forwarded by the county treasurer to the registrar of motor vehicles.

(6) Before a registration decal may be applied for pursuant to the laws of this state, the owner must present the owner's certificate of ownership, or copy of completed application therefor, as a prerequisite to completing the application for the registration decal.

History: En. Sec. 2, Ch. 434, L. 1971; amd. Sec. 18, Ch. 391, L. 1973; amd. Sec. 1, Ch. 249, L. 1974.

#### Amendments

The 1973 amendment substituted "de-

partment of revenue" for "board of equalization" in subsection (1).

The 1974 amendment substituted "registrar of motor vehicles" in subsection (1) for "state department of revenue."

**53-1014. Transfer of title or interest.** (1) Upon a transfer of any title or interest of an owner or owner in or to a snowmobile, registered under the provisions of this act as hereinbefore required, the person or persons whose title or interest is to be transferred shall write their

signatures with pen and ink upon the certificate of ownership issued for such vehicle, in the appropriate space provided upon the reverse side of such certificate, and such signature shall be acknowledged before a notary public.

(2) Within ten (10) days thereafter, the transferee shall forward both the certificate of ownership so endorsed and the certificate of registration, together with the information required under this act, to the registrar, who shall file the same upon receipt thereof and no certificate of ownership and certificate of registration shall be issued by the registrar of motor vehicles until the outstanding certificates are surrendered to that office or their loss established to his reasonable satisfaction. The registrar of motor vehicles shall collect a fee of two dollars (\$2) for each application for transfer of ownership.

(3) The provisions of subdivision (2) of this section, requiring a transferee to forward the certificate of ownership after endorsement and the certificate of registration to the registrar, shall not apply in the event of the transfer of a snowmobile to a duly licensed snowmobile dealer intending to resell such vehicle and who operates the same only for demonstration purposes, but every such dealer shall upon transferring such interest deliver such certificate of ownership and certificate of registration with an application for registration executed by the new owner in accordance with the provisions of this act, and the registrar upon receipt of said certificate of ownership, certificate of registration and application for registration, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership and certificate of registration together with a statement of any conditional sales contract, mortgage, or other lien.

**History:** En. Sec. 3, Ch. 434, L. 1971.

**53-1015. Lost or mutilated certificates.** In the event any certificate of registration or ownership shall be lost, mutilated or become illegible, the persons to whom the same shall have been issued shall immediately make application for and may obtain a duplicate thereof, upon payment of a fee of one dollar (\$1).

**History:** En. Sec. 4, Ch. 434, L. 1971.

**53-1016. Exemptions.** (1) The provisions of this act, with respect to registration and certification of title, shall not apply to snowmobiles owned or used by the United States or another state or any agency or political subdivision thereof, or any snowmobile registered in a country other than the United States and to be temporarily used within this state for a period of not more than thirty (30) days, or any snowmobile registered in another state of the United States, but to be temporarily used within this state for not more than thirty (30) days. Snowmobiles owned by the state of Montana, or any agency or political subdivision thereof, shall be exempt only from the payment of fees, but shall otherwise comply with all the requirements of this act.

(2) No political subdivisions of this state shall have authority to prescribe further licensing or registration of snowmobiles and no political

subdivision shall levy fees or charges for use or operation of snowmobiles within the subdivision.

History: En. Sec. 5, Ch. 434, L. 1971.

**53-1017. Report of stolen and recovered snowmobiles.** It shall be the duty of the sheriff of every county of the state and of the chief of police or commissioner of police of every city to make immediate report to the registrar of motor vehicles of all snowmobiles reported to him as stolen or recovered, upon forms provided for by the registrar of motor vehicles. Failure on the part of any officer shall be deemed to be misfeasance in office and shall constitute grounds for removal. Upon receipt of such information, the registrar of motor vehicles shall file the same in an index to be known as the "stolen and recovered snowmobile index." It shall also be the duty of the registrar of motor vehicles to file reports of stolen and recovered snowmobiles reported to him from other states. The registrar of motor vehicles shall prepare once a month a list of all snowmobiles stolen or recovered during the previous month and forward a copy of the same to every sheriff, and all police departments in cities of the first, second and third class. Such list shall also be forwarded to the secretary of state, or other proper official, in each state of the United States. Before a certificate of title, as heretofore provided, shall be issued under this act, the motor and serial number on the motor vehicle to be registered shall be checked against the "stolen and recovered snowmobile index."

History: En. Sec. 6, Ch. 434, L. 1971.

**53-1018. Operation on public roads and streets.** (1) No person shall operate a snowmobile upon a controlled-access highway or facility at any time. Snowmobile operation may be permitted on the roadway or shoulder of any other public road or highway, state highway, county road, or city street located within the boundaries of any municipality, only in the event that said street, road, or highway is drifted or covered by snow to such an extent that travel thereon by other motor vehicles is impractical or impossible, or when the operator is in possession of a written permit for such travel, issued by the municipality in the case of town or city streets, the board of county commissioners for county roads, or the state highway patrol for all other highways, or upon those streets of a municipality where such operation has been specifically so authorized by a duly enacted municipal ordinance.

(2) A snowmobile may make a direct crossing of a street or highway, where such crossing is necessary to get to another authorized area of operation. Such crossing shall be made at an angle of approximately ninety degrees (90°) to the direction of the highway, at a place where no obstruction prevents a quick and safe crossing. The snowmobile shall make a complete stop before entering upon any part of the highway or road, and the operator shall yield the right of way to all oncoming traffic.

(3) No snowmobile shall be operated upon a public street or highway when permitted to do so by this act, unless equipped with at least



one head lamp and one tail lamp, which shall be lighted at all times during such operation, and unless equipped with a suitable braking device which may be operated by either hand or foot.

(4) The operator of a snowmobile who operates his vehicle upon a public roadway, street or highway when allowed to do so under the provisions of this act shall have in his possession a license to drive a motor vehicle as required by the laws of the state of Montana. An operator who crosses a street, road, or highway, or who operates a snowmobile in any other areas of the state where operation is lawfully permitted, shall not be required to apply for or possess a driver's license under the laws of the state of Montana.

History: En. Sec. 7, Ch. 434, L. 1971.

**53-1019. Unlawful operation on streets and highways.** It shall be unlawful for any person to drive or operate any snowmobile upon a public street or highway in any one or more of the following manners:

(1) At a rate of speed greater than provided by law for motor vehicles.

(2) While under the influence of intoxicating liquor or narcotics or habit-forming drugs.

(3) In a careless or reckless manner so as to endanger the person or property of another, or to cause injury or damage to either.

(4) Without a lighted head and taillight between the hours of dusk and dawn.

(5) Operating a snowmobile, or permitting such operation, by any person who by reason of age or physical or mental disability is incapable of operating the snowmobile as required for safety under the prevailing circumstances.

History: En. Sec. 8, Ch. 434, L. 1971. •

**53-1020. Other unlawful operation.** No person while operating a snowmobile, shall use the same:

(1) For the purpose of driving, rallying or harassing any of the game animals, game birds, or fur-bearing animals of the state, or any livestock, provided, however, that an owner of livestock is not prohibited from managing or driving his own livestock by the use of snowmobiles and may direct other persons to so manage or drive his livestock; provided further that the department of fish and game, including its duly authorized employees, is not prohibited from managing or driving game animals, game birds or fur-bearing animals by the use of snowmobiles.

(2) To discharge a firearm from or upon a snowmobile.

(3) Regulation of snowmobile noise. (a) Except as provided in this section, every snowmobile shall be equipped at all times with noise-suppression devices, including an exhaust muffler, in good working order and in constant operation. No snowmobile shall be modified by any person in any manner that shall amplify or otherwise increase total noise emissions to a level greater than that emitted by the snowmobile as originally constructed, regardless of date of manufacture.

(b) No new snowmobile manufactured prior to June 30, 1975, except snowmobiles designated for competition purposes only, may be sold or offered for sale unless that machine has been certified by the manufacturer as being able to conform to a sound level limitation of not more than eighty-two (82) dbA measured at fifty (50) feet. Every person who owns or operates a snowmobile manufactured after June 30, 1972, but prior to June 30, 1975, shall maintain his machine in such a manner that it will not exceed a sound level limitation of eighty-two (82) dbA measured at fifty (50) feet.

(c) No new snowmobile manufactured after June 30, 1975, but prior to June 30, 1978, except snowmobiles designated for competition purposes only, may be sold or offered for sale unless that machine has been certified by the manufacturer as being able to conform to a sound level limitation of not more than seventy-eight (78) dbA measured at fifty (50) feet. Every person who owns or operates a snowmobile manufactured after June 30, 1975, but prior to June 30, 1978, shall maintain his machine in such a manner that it will not exceed a sound level limitation of seventy-eight (78) dbA measured at fifty (50) feet.

(d) No new snowmobile manufactured after June 30, 1978, except snowmobiles designated for competition purposes only, may be sold or offered for sale unless that machine has been certified by the manufacturer as being able to conform to a sound level limitation of not more than seventy-three (73) dbA measured at fifty (50) feet. Every person who owns or operates a snowmobile manufactured after June 30, 1978, shall maintain his machine in such a manner that it will not exceed a sound level limitation of seventy-three (73) dbA measured at fifty (50) feet.

(e) The fish and game commission shall have the authority to adopt and revise sound level limitations for all snowmobiles manufactured after June 30, 1978. However, a sound level limitation adopted or revised by the commission shall not be higher than a decibel standard of seventy-three (73) dbA measured at fifty (50) feet. The adoption or revision of any sound level limitation by the commission shall be effective beginning June 30 of the succeeding calendar year and any sound level limitation formally adopted or revised shall remain in effect for a minimum period of two (2) years. Every person who owns or operates a snowmobile manufactured after June 30, 1978, shall maintain his machine in compliance with the sound level limitation which is applicable to new snowmobiles manufactured during the period that a sound level limitation adopted by the commission is in effect.

(f) A manufacturer who certifies that a new snowmobile can comply with the noise limitation requirements of this act shall affix a permanent notice of that certification to every snowmobile offered for sale in the state of Montana.

(g) In certifying that a new snowmobile can comply with the noise limitation requirements of this act, a manufacturer shall make such a certification based upon measurements made in accordance with SAE recommended practice J192, as amended. The fish and game commission, in enforcing the provisions of this act, shall make measurements of snowmobile

noise in accordance with applicable practices outlined in the "procedure for sound level measurements of snowmobiles" used by the international snowmobile industry association (January, 1969), as amended, or with such other standards for measurement of sound level as the commission may adopt.

(h) This section does not apply to organized races or similar competitive events held on

(i) private lands, with the permission of the owner, lessee, or custodian of the land, or

(ii) public lands, with the consent of the public agency having the authority to grant such consent, provided that total sound produced by such an event shall not exceed fifty (50) dbA at any point fifty (50) feet or more outside the area under the control of the sponsoring entity.

(4) Upon a railroad right of way or railroad track, provided, however, it shall not be unlawful for officers or employees of any railroad operating over said tracks to operate snowmobiles thereon.

**History:** En. Sec. 9, Ch. 434, L. 1971; amd. Sec. 2, Ch. 124, L. 1973; amd. Sec. 2, Ch. 91, L. 1974.

#### Amendments

The 1973 amendment added the proviso to subdivision (1).

The 1974 amendment rewrote subdivision (3) which, in substance, provided that after June 30, 1972, manufacturers of

new snowmobiles should certify that the vehicle conformed with sound level limitation of not more than eighty-five decibels, specifying the scale and methods for testing, giving the commission certain discretionary powers in respect to noise limitations, requiring certain labeling of the vehicle, and providing certain exemptions; and substituted "to operate" for "from operating" near the end of subdivision (4).

**53-1021. Accidents involving snowmobiles.** The owner or operator of a snowmobile which is involved in any accident, collision, or upset upon a public street or highway where personal injury occurs to any person, or where property damage exceeds one hundred dollars (\$100), shall report the accident or occurrence to a state or local law-enforcement agency responsible for collecting reports of accidents involving motor vehicles.

**History:** En. Sec. 10, Ch. 434, L. 1971.

**53-1022. Enforcement.** The following persons may enforce the provisions of this act:

(1) The enforcement officers employed by the state department of fish and game, with respect to violations relating to wildlife or birds, discharging firearms, or sound level limitations. However, with respect to the sale of any new snowmobile which is subject to the provisions of this act, the attorney general of the state of Montana shall, upon the request of the commission, sue for the recovery of the penalties provided in section 53-1023, and bring an action for a restraining order, or temporary or permanent injunction, against a person who sells or offers to sell a new snowmobile that does not satisfy the sound level limitations imposed by this act.

(2) The sheriffs of the respective counties, and the police officers of cities and towns, within their respective jurisdictions, and the state highway patrol, with respect to any violation of this act upon the public streets or highways, or any public right of way.



**History:** En. Sec. 11, Ch. 434, L. 1971; amd. Sec. 3, Ch. 91, L. 1974.

#### Amendments

The 1974 amendment divided the section into subdivisions (1) and (2); in subdivision (1), substituted "wildlife" for

"game animals" near the end of the first sentence; substituted "sound level limitations" for "mufflers" at the end of the first sentence; and added the last sentence; and in subdivision (2) added "or any public right of way" at the end of the subdivision.

### 53-1023. Penalties.

(1) A person who violates any provision of this act or a rule and regulation adopted pursuant thereto shall pay a civil penalty of not less than fifteen dollars (\$15) nor more than five hundred dollars (\$500) for each separate violation.

(2) A person who willfully violates any provision of this act or a rule or regulation adopted pursuant thereto shall pay a civil penalty of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000) for each separate violation.

(3) A manufacturer who certifies that a new snowmobile can meet the sound level limitations imposed by this act shall be subject to the penalty provisions of subsections (1) and (2) if any machine so certified does not meet the appropriate sound level limitation.

(4) For the purposes of this section, every sale of a new snowmobile that does not meet the sound level limitations imposed by this act shall constitute a separate violation.

**History:** En. Sec. 12, Ch. 434, L. 1971; amd. Sec. 4, Ch. 91, L. 1974.

#### Amendments

The 1974 amendment rewrote this section which formerly provided, in substance, that violations should constitute misdemeanors, and providing that for violations upon public highways, punishment should be as provided by the motor

vehicle law; that for harassing animals or birds, punishment should be as provided by law; and that for other violations, punishment should be as provided by the law for misdemeanors.

#### Repealing Clause

Section 13 of Ch. 434, Laws 1971 read "Sections 53-1001 through 53-1011, R. C. M., 1947, are hereby repealed."

**53-1024. Tax on snowmobiles—definitions.** As used in this act, the following terms shall have the meanings indicated herein, unless the context otherwise clearly requires that another meaning be intended:

a. "Person" includes an individual, partnership, association, corporation, and any other body or group of persons, whether incorporated or not, and regardless of the degree of formal organization.

b. "Snowmobile" includes any self-propelled vehicle designed primarily for travel on snow or ice or natural terrain which may be steered by wheels, skis, or runners, and which is not otherwise registered or licensed under the laws of the state of Montana.

c. "Owner" shall include every person as defined herein, other than a lien holder or other person having a security interest only, holding record title to a snowmobile and entitled to the use or possession thereof.

**History:** En. Sec. 1, Ch. 435, L. 1971.

#### Title of Act

An act providing for the display of tax-paid decals on every snowmobile operated in the state of Montana; for the yearly

issuance of such decals; for a change in the assessment date of snowmobiles; providing penalties for violation of this act; and amending section 84-406, R. C. M. 1947, and providing an effective date.

**53-1025. Display of tax-paid decals on snowmobiles required—application and issuance.** (a) No snowmobile shall be operated by any person in the state of Montana unless there is displayed in a conspicuous place thereon a decal as visual proof that Montana personal property taxes have been paid thereon for the current year. Application for the issuance of such tax-paid decal shall be made to the county treasurer upon forms to be furnished for this purpose, which may be obtained from the registrar of motor vehicles or at the county assessor's office in the county wherein the owner resides, and is to provide for substantially the following information: name of owner, address, registration number, name of manufacturer, model number, make, horsepower, year of manufacture, statement evidencing assessment, payment of property tax, and such other information as the registrar of motor vehicles may require. Said application shall be signed by the county treasurer and transmitted by him to the registrar of motor vehicles accompanied by a fee of two dollars (\$2). All moneys collected from payment of such fees shall be turned over to the state treasurer and placed by him in the earmarked revenue fund to the credit of the state fish and game commission, with one dollar (\$1) designated for use in enforcing the purposes of this act and one dollar (\$1) designated for use in developing snowmobile facilities. Upon receipt of the application in approved form the registrar of motor vehicles or county treasurer shall issue to the applicant a decal in the style and design prescribed by the registrar of motor vehicles and of a different color than the preceding year, numbered numerically.

(b) Before filing the application with the county treasurer, the applicant shall submit the same to the county assessor of the county and the county assessor shall enter on the application in a place provided for that purpose, the full and true and assessed valuation of the snowmobile for the year for which the application is made.

(c) The applicant shall pay the county treasurer the application fee and shall also pay the personal property taxes assessed against the snowmobile for the current year before the application for registration or re-registration may be accepted by the county treasurer.

**History:** En. Sec. 2, Ch. 435, L. 1971; amd. Sec. 19, Ch. 391, L. 1973; amd. Sec. 1, Ch. 494, L. 1973; amd. Sec. 2, Ch. 249, L. 1974.

#### Amendments

Chapter 391, Laws of 1973, substituted references to the department of revenue for references to the board of equalization throughout the section.

Chapter 494, Laws of 1973, made the same changes as did Chapter 391, and in addition inserted "or the county treasurer" near the beginning of the second sentence; substituted "county treasurer" for "own-

er" near the beginning of the third sentence; increased the fee for the decal from \$1.00 to \$2.00 at the end of the third sentence; inserted the fourth sentence; inserted "or county treasurer" near the beginning of the fifth sentence; and made minor changes in phraseology.

The 1974 amendment deleted "state department of revenue" before "the county treasurer" in the second sentence of subsection (a); substituted "registrar of motor vehicles" for "department" throughout subsection (a); added subsections (b) and (c); and made minor changes in style.

**53-1025.1. Duplicate registration receipt or decal.** In the event any registration receipt or decal shall be lost, mutilated or become illegible, the persons to whom the same shall have been issued shall immediately

make application for and may obtain a duplicate thereof, upon payment of a fee of one dollar (\$1) to the county treasurer.

**History:** En. Sec. 2, Ch. 494, L. 1973.

**Title of Act**

An act to provide that the fee of two dollars (\$2) for issuance of decals for

snowmobiles shall be deposited with the state treasurer to the credit of the state fish and game commission; amending section 53-1025, R. C. M. 1947.

**53-1026. Application to be made annually.** Application must be made to the county treasurer for the issuance of tax-paid decals annually. All tax-paid decals expire on December 31 of the year in which they are issued and application for the issuance of a tax-paid decal must be filed with the county treasurer not later than January 31 of each year.

**History:** En. Sec. 3, Ch. 435, L. 1971; amd. Sec. 3, Ch. 249, L. 1974.

**Amendments**

The 1974 amendment substituted "county treasurer" for "board" in the first

sentence; deleted "Snowmobiles may be operated between January 1 and January 20 in each year without displaying the current year's decal on the condition that application therefor has been made"; and added the second sentence.

**53-1027. Failure to display decal a misdemeanor—penalty.** The failure to display a current tax-paid decal during the time provided in this act shall constitute a misdemeanor, punishable by a fine of not less than ten dollars (\$10) nor more than fifty dollars (\$50).

**History:** En. Sec. 4, Ch. 435, L. 1971.

**53-1028. Officers authorized to enforce act.** The fish and game commission, enforcement personnel, the sheriffs and their deputies of the various counties of the state, the Montana highway patrol, and the police of each municipality shall enforce the provisions of this act.

**History:** En. Sec. 5, Ch. 435, L. 1971.

**53-1029. Issuance of dealer registration certificate.** (1) A dealer registration certificate shall be issued in accordance with this act.

(2) Upon receipt of dealer application and payment of fees which will be five dollars (\$5), the dealer shall be issued two (2) dealer snowmobile identification cards which will be carried by dealer or dealer's customer when operating or demonstrating dealer's snowmobiles.

(3) No bond will be required of the dealer.

(4) Additional dealer snowmobile identification cards may be purchased by the dealer for a fee of two dollars (\$2).

**History:** En. Sec. 3, Ch. 494, L. 1973.

## CHAPTER 11—MOTOR VEHICLE INSPECTIONS

Section 53-1101. Vehicle inspection required.

53-1102. Times of inspection.

53-1103. Licensing of inspection stations.

53-1104. Supervision of inspection stations.

53-1105. Certification of vehicles.

53-1106. Inspection fee—additional requirements for certification—handling of vehicle—owner complaints.

53-1107. Repairs to substandard vehicles—fee paid to department by inspection stations.



- 53-1108. Only official inspection stations allowed to advertise.
- 53-1109. Counterfeiting of certificate prohibited.
- 53-1110. Exemptions.
- 53-1111. Rule-making power granted.
- 53-1112. Police may verify certification.
- 53-1113. Revocation of registration.
- 53-1114. Certain acts by vehicle owner misdemeanors.
- 53-1115. Certain acts by inspection station misdemeanors.

**53-1101. Vehicle inspection required.** The state department of justice shall require every vehicle defined by section 53-104 and having a gross vehicle weight of 8,000 or less and that are licensed for use on the highways of the state currently registered and domiciled in this state, excepting house trailers not operated upon the highways, vehicles granted inspection reciprocity by other jurisdictions, trailers and semitrailers having an unladen weight of less than one thousand five hundred (1,500) pounds, vehicles registered and domiciled in another jurisdiction having a vehicle inspection law, vehicles operated in interstate commerce which are subject to United States department of transportation safety regulations, to be inspected as provided by this act, at an official inspection station as designated by the department.

**History:** En. 53-1101 by Sec. 1, Ch. 289,  
L. 1974.

**Title of Act**

An act to require motor vehicle inspections in the state of Montana; and providing an effective date.

**53-1102. Times of inspection.** The department shall require vehicles described in section 1 [53-1101] to be inspected at the following times, before the end of the fourth year following the effective date of this act and no less than once every four years thereafter.

**History:** En. 53-1102 by Sec. 2, Ch. 289, L. 1974.

**53-1103. Licensing of inspection stations.** The department shall designate and issue licenses for and supply all necessary forms to official inspection stations for the inspection of vehicles as required by this act. Application for a license shall be made upon an official form accompanied by a fee of twenty-five dollars (\$25) and shall only be granted when the department has determined that the garage, service station or shop has met the requirements listed below:

(1) **Eligibility:**

(a) each applicant must furnish proof that he has proper facilities, proper equipment and be properly qualified or has properly qualified personnel in his employ to accomplish satisfactory inspections in accordance with regulations promulgated by the department;

(b) companies owning ten (10) or more vehicles who have their own garages and repair facilities may apply for an official fleet inspection station license provided the equipment, facilities and personnel meet the requirements set forth in this act. The official inspection station sign shall not be required at fleet inspection stations.

(2) **Duration:** Licenses once issued are continuously in force at the indicated location until suspended, revoked or ownership changes. All

licenses to operate as an official inspection station must be conspicuously posted on the licensed premises at all times.

(3) Operation:

(a) all licensed official inspection stations must be open for business during regular business hours except those licensed to inspect only their own vehicles;

(b) inspections may be made only at the location shown on the official inspection sticker;

(c) fleet inspection stations licensed to inspect vehicles owned, leased or controlled by them are in no event allowed to inspect privately owned vehicles, including those of officers or employees of the company.

History: En. 53-1103 by Sec. 3, Ch. 289, L. 1974.

**53-1104. Supervision of inspection stations.** The department shall supervise and periodically inspect all licensed official inspection stations, and may revoke, suspend or refuse to issue a license to or applied for by an official inspection station. Any licensee whose license is revoked pursuant to the provisions of this act may make application for relicensing after the expiration of one (1) year from the date of the revocation. A suspension under the provisions of this act shall not exceed six (6) months.

History: En. 53-1104 by Sec. 4, Ch. 289, L. 1974.

**53-1105. Certification of vehicles.** The person operating an official inspection station shall issue a certificate of inspection and approval upon an official form furnished by the department for a vehicle only upon inspecting the vehicle and determining that the vehicle is in good condition and proper adjustment in accordance with the rules and regulations of the department and minimum applicable federal vehicle safety inspection standards. A record and report shall be made on every inspection and every certificate issued. Those records shall be forwarded to the department at times as the department, by regulation, shall specify. The department shall investigate all conflicting inspection and certification reports and shall resolve disputes arising between inspection stations issuing the conflicting reports.

A certificate of inspection issued in accordance with this section certifies that the inspected vehicle met the minimum standards of inspection at the time of inspection and no other certification of condition by such certificate is expressed or implied.

History: En. 53-1105 by Sec. 5, Ch. 289, L. 1974.

**53-1106. Inspection fee—additional requirements for certification—handling of vehicle—owner complaints.** The fee for inspection, including the issuance of certificate and approval, shall be nine dollars (\$9). No certificate of inspection and approval shall be issued until the prescribed inspection is completed and the licensee has complied with the provisions of this act.

The inspection certificate shall be placed in or on such vehicle as shall be established by the department.

The department shall make available to each station appropriate report forms on which vehicle owners who receive a certificate of inspection may register complaints regarding the inspection received. Each inspection station shall deliver a copy of this report form to each vehicle owner.

The department shall maintain records on complaints concerning official inspection stations and shall investigate such complaints and take such action as just and proper under the circumstances.

History: En. 53-1106 by Sec. 6, Ch. 289, L. 1974.

**53-1107. Repairs to substandard vehicles—fee paid to department by inspection stations.** In the event repair or adjustment of any vehicle or its equipment is found necessary upon inspection, the owner of said vehicle may obtain such repair or adjustment at any place he may choose, within fifteen (15) days, but in every event an official certificate of inspection and approval shall be obtained from an official inspection station within fifteen (15) days after the initial inspection and before such vehicle shall be operated upon the highways of this state. The fee shall be collected at the time of the original inspection. No additional fee shall be charged if the vehicle is repaired and returned to the same inspection station within fifteen (15) days.

A fee of one dollar and twenty-five cents (\$1.25) shall be collected from each official inspection station for each certificate of inspection, said fee to be paid into the state highway fund. A refund shall be made, or credit allowed, for unused certificates of inspection, or for certificates lost, mutilated or destroyed, to the extent provided by the department.

History: En. 53-1107 by Sec. 7, Ch. 289, L. 1974.

**53-1108. Only official inspection stations allowed to advertise.** No person shall in any manner represent any place as an official inspection station unless such station is operated under a valid license issued by the department.

All signs or posters pertaining to the safety inspection program to be used by an official inspection station shall be approved by the department before being posted.

No person other than an official inspection station, an appointed employee of the official inspection station, shall issue a certificate of inspection and approval.

History: En. 53-1108 by Sec. 8, Ch. 289, L. 1974.

**53-1109. Counterfeiting of certificate prohibited.** No person shall make issue or knowingly use any imitation or counterfeit of an official certificate of inspection and approval.

No person shall display, or cause a permit to be displayed, for any vehicle any certificate of inspection and approval knowing it to be ficti-



tious, or issued for another vehicle, or issued without an inspection being made.

No unauthorized person shall knowingly possess vehicle inspection certificates.

History: En. 53-1109 by Sec. 9, Ch. 289, L. 1974.

**53-1110. Exemptions.** A motor vehicle which is thirty (30) years and older and is registered as a collectors' item in section 53-106.1 and which is not for general transportation, is exempt from the provisions of this act.

History: En. 53-1110 by Sec. 10, Ch. 289, L. 1974.

**53-1111. Rule-making power granted.** The department is hereby authorized to make all necessary rules and regulations for the administration and enforcement of this act.

History: En. 53-1111 by Sec. 11, Ch. 289, L. 1974.

**53-1112. Police may verify certification.** Any police officer or examiner who shall exhibit his badge or other sign of authority may stop any vehicle required to be inspected under this act and require the owner or operator to display an official certificate of inspection and approval for the vehicle being operated.

History: En. 53-1112 by Sec. 12, Ch. 289, L. 1974.

**53-1113. Revocation of registration.** The department may revoke the registration of a vehicle registered in this state and operated on the highways of the state which:

(1) does not carry a current certificate of inspection and approval issued in accordance with this act;

(2) is shown by the inspection to be incapable of being placed in a proper condition to make its use safe on the highway, and for which a certificate of inspection and approval cannot be obtained;

(3) is found to have violated the provisions of section 14 [53-1114] of this act.

History: En. 53-1113 by Sec. 13, Ch. 289, L. 1974.

**53-1114. Certain acts by vehicle owner misdemeanors.** Any person who refuses to have his vehicle examined, or, after having had it examined, refuses to carry a certificate of inspection and approval, if issued, or who fraudulently obtains a certificate of inspection and approval or who refuses to place his vehicle in proper condition after having had the same examined, or who, in any manner, fails to conform to the provisions of this act, shall be guilty of a misdemeanor.

History: En. 53-1114 by Sec. 14, Ch. 289, L. 1974.

**53-1115. Certain acts by inspection station misdemeanors.** Willful failure on the part of any inspector or license holder to comply with the provisions of this act shall be a misdemeanor.

**History:** En. 53-1115 by Sec. 15, Ch. 289, L. 1974.

**Effective Date**

Section 16 of Ch. 289, Laws 1974 read  
"This act shall be effective on and after  
January 1, 1975."





## TITLE 54—NARCOTIC DRUGS

- Chapter 1. Dangerous Drug Act, 54-132 to 54-138.  
3. Controlled substances, 54-301 to 54-327.

### CHAPTER 1—DANGEROUS DRUG ACT

- Section 54-132. Criminal sale of dangerous drugs.  
54-133. Criminal possession of dangerous drugs.  
54-134. Fraudulently obtaining dangerous drugs.  
54-135. Altering labels on dangerous drugs.  
54-136. Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs.  
54-137. Alternative sentencing authority.  
54-138. Jurisdiction.

#### 54-101 to 54-128. Repealed.

##### Repeal

Sections 54-101 to 54-128 (Secs. 1 to 26, 28, 30, Ch. 176, L. 1937; Secs. 1 to 3, Ch. 146, L. 1941; Sec. 1, Ch. 12, L. 1949; Secs. 1, 2, Ch. 174, L. 1953; Secs. 1 to 7, Ch. 7,

L. 1955; Sec. 1, Ch. 6, L. 1959), the Uniform Drug Act, was repealed by Sec. 14, Ch. 314, Laws 1969. For new law, see secs. 54-301 to 54-327.

#### 54-129 to 54-131. Repealed.

##### Repeal

Sections 54-129 to 54-131 (Secs. 1 to 3, Ch. 314, L. 1969), relating to dangerous

drugs, were repealed by Sec. 31, Ch. 412, Laws 1973. For new law, see secs. 54-301 to 54-327.

**54-132. Criminal sale of dangerous drugs.** (a) A person commits the offense of a criminal sale of dangerous drugs if he sells, barter, exchange, gives away, or offers to sell, barter, exchange or give away, manufactures, prepares, cultivates, compounds or processes any dangerous drug as defined in this act.

(b) A person convicted of criminal sale of dangerous drugs shall be imprisoned in the state prison for a term not less than one (1) year nor more than life.

(c) Practitioners and agents under their supervision acting in the course of a professional practice are exempt from this section.

**History:** En. Sec. 4, Ch. 314, L. 1969; amd. Sec. 1, Ch. 55, L. 1973; amd. Sec. 24, Ch. 412, L. 1973; amd. Sec. 1, Ch. 258, L. 1974.

##### Compiler's Notes

This section was amended twice in 1973, once by Ch. 55 and once by Ch. 412. Neither amendatory act mentioned the other. Since Ch. 412 included the change made by Ch. 55, the compiler has used the text of Ch. 412 above.

**NOTE.**—The following states have enacted the Uniform Narcotic Drug Act: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District

of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Virgin Islands, Washington, West Virginia, Wisconsin, and Wyoming.

##### Title of Act

An act providing for regulation of the possession and sale of dangerous drugs in

the state of Montana; defining dangerous drugs to include depressant, stimulant, hallucinogenic and narcotic drugs and defining certain words and phrases in connection therewith; defining who may lawfully sell and possess dangerous drugs; providing for the fraudulent obtaining of dangerous drugs or the alteration of labels; providing for the enforcement of unlawful sale and possession; providing for the state board of pharmacy to regulate, license and supervise, and designate other dangerous drugs after proper notice and hearing; amending section 95-302, R. C. M. 1947, to exclude trial jurisdiction in the justices' courts in cases commenced under this act; repealing sections 27-724, 27-725, 54-101 through 54-128 inclusive, 94-35-123, 94-35-148, 94-35-199, R. C. M. 1947.

### Amendments

Chapter 55, Laws of 1973, deleted from subsection (b) a second sentence reading "Any person of age twenty-one years or under convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence"; and made a minor change in style.

Chapter 412, Laws of 1973, deleted "and does not come within the exceptions of section 3" from the end of subsection (a); and deleted from subsection (b) the same sentence deleted by Ch. 55.

The 1974 amendment inserted in subsection (2) "barter, exchanges, gives away, or offers to sell, barter, exchange or give away"; and added subsection (c).

### Cross-References

Justices' court jurisdiction, sec. 95-302.

### Information Insufficient

Information charging offense under this

section was insufficient where it contained neither identity of informer nor specific facts concerning the offense and identity of time and place to protect accused from double jeopardy. *State ex rel. Offerdahl v. District Court*, 156 M 432, 481 P 2d 338.

### Nature of Drug

Evidence that victims hallucinated following ingestion of drugs furnished by defendant and described by him as "acid" established dangerous nature of drugs to support conviction, despite absence of proof of exact type of drug, and the possibility that hallucinations might have been flashback from previous trips did not necessarily create reasonable doubt. *State v. Dunn*, 155 M 319, 472 P 2d 288.

### Possession Only

Trial court's instruction to jury that law implies knowledge that drug was a prohibited drug from mere possession of the drug was an incorrect statement of the law, confusing to the jury, and entitled defendant to new trial. *State v. Anderson*, 159 M 344, 498 P 2d 295.

### Repeal Pending Prosecution

Where defendant was charged with selling narcotics in violation of former section 54-102, and between date of commission of crime and time information was filed legislature repealed former section 54-102 and passed this section of Dangerous Drug Act, such repeal did not bar prosecution under former section since general statutory saving clause, section 43-514, operated to sustain jurisdiction of subject matter in district court. *State ex rel. Huffman v. District Court*, 154 M 201, 461 P 2d 847.

## DECISIONS UNDER FORMER LAW

### Dangerous Drug

Defendant was not entitled to have words "and none others" added at end of jury instructions defining dangerous drugs in words of statute. *State v. Dunn*, 155 M 319, 472 P 2d 288.

### Deferred Imposition of Sentence

Evidence of sale of two pounds of hashish to three minors, one only 15 years old, was sufficient to overcome presumption of entitlement to deferred imposition of sentence. *Campus v. State*, 157 M 321, 483 P 2d 275.

The statutory presumption of entitlement to deferred imposition of sentence for persons under 21 convicted of a first violation may be overcome where the evidence is sufficient, but, the record itself must disclose the evidence; evidence may

be contained within or without proof of the crime itself; aggravating circumstances should be substantial evidence beyond the simple facts of the prima facie case. *Campus v. State*, 157 M 321, 483 P 2d 275.

Conditioning deferred imposition of sentence on serving term of 30 days in county jail was within trial court's authority where 18-year-old defendant was convicted of sale of dangerous drugs. *State ex rel. Woodbury v. District Court*, 159 M 128, 495 P 2d 1119, distinguishing *State v. Drew*, 158 M 214, 490 P 2d 230.

Hearsay statement and affidavits which accused defendant of prior dealings in drugs were not admissible in aggravation and mitigation hearing to overcome presumption that defendant was entitled to deferred imposition of sentence, where

defendant had no opportunity to cross-examine affiants or even determine if they were known to him. *State v. Harney*, — M —, 499 P 2d 802.

**54-133. Criminal possession of dangerous drugs.** (a) A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug as defined in this act.

(b) Any person convicted of a criminal possession of marihuana or its derivatives in an amount, the aggregate weight of which does not exceed sixty (60) grams of marihuana, or one (1) gram of hashish, shall, for the first offense, be guilty of a misdemeanor and is punishable by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail not to exceed one (1) year, or by both such fine and imprisonment. A person convicted of a second, or subsequent, offense under this subsection is punishable by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail not to exceed one (1) year or in the state prison not to exceed three (3) years or by both such fine and imprisonment.

(c) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection (b) shall be imprisoned by imprisonment in the state prison not to exceed five (5) years.

(d) A person of the age of twenty-one (21) years or under, convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence. Jurisdiction under this section shall be exclusively in the district court.

**History:** En. Sec. 5, ch. 314, L. 1969; amd. Sec. 1, Ch. 228, L. 1971; amd. Sec. 26, Ch. 412, L. 1973; amd. Sec. 1, Ch. 174, L. 1974.

Section 2 of Ch. 174, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

#### Amendments

The 1971 amendment inserted "other than criminal possession of marihuana and its derivatives as hereinafter provided" in the first sentence of subsection (b); added new second and third sentences to subsection (b); redesignated the former second sentence of subsection (b) as the first sentence of subsection (d); added the second sentence of subsection (d); and made minor changes in phraseology.

The 1973 amendment deleted "and does not come within the exceptions of section 3" from the end of subsection (a).

The 1974 amendment deleted from the beginning of subsection (b) "A person convicted of criminal possession of dangerous drugs, other than criminal possession of marihuana and its derivatives as hereinafter provided, shall be imprisoned by imprisonment in the state prison not to exceed five (5) years"; inserted subsection (c); and redesignated former subsection (c) as subsection (d).

#### Effective Dates

Section 2 of Ch. 228, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

#### Constitutionality

This section is not unconstitutionally vague and uncertain due to its failure to require knowledge and intent in relation to possession of dangerous drugs since meaning of term "possession" has been so well defined that it cannot be considered ambiguous. *State ex rel. Glantz v. District Court*, 154 M 132, 461 P 2d 193.

#### Constructive Possession

Possession of airline baggage claim tag was constructive possession of contraband contained in suitcase. *State v. Trowbridge*, 157 M 527, 487 P 2d 530.

#### Deferred Sentence

Trial court improperly sentenced 21-year-old defendant to three years imprisonment for violation of this section where there was no evidence to overcome the statutory presumption that defendant was entitled to deferred sentence. *State v. Simtob*, 154 M 286, 462 P 2d 873.

#### Elements of Crime

Whether several ingredients besides amphetamine are present within a pill is immaterial in a prosecution under Danger-



ous Drug Act. *State v. Hull*, 158 M 6, 487 P 2d 1314.

#### Probable Cause for Arrest

Where relators were arrested and charged under this section, allegation that probable cause did not exist for their arrest without warrant was without merit in regard to three who were present and lived in house where drugs were found; but probable cause did not exist concerning fourth party arrested who was present on premises but did not live there, notwithstanding later finding of drugs on this party, since mere presence in place where search was made without further proof of probable cause was insufficient to justify arrest. *State ex rel. Glantz v. District Court*, 154 M 132, 461 P 2d 193.

#### Quantity in Possession

As the Dangerous Drug Act did not require proof of any specific quantity of a dangerous drug in order to constitute vio-

lation, it was unnecessary for the jury to find that the defendant possessed an amphetamine pill in sufficient quantity to be dangerous. *State v. Hull*, 158 M 6, 487 P 2d 1314.

#### Sentencing

Under subsection (c), a defendant may not be sentenced to a term in jail; and at the termination of the time of deferment or stayed imposition, the sentencing statute (95-2207) authorizes the court to accept a plea withdrawal or to strike the verdict of guilty and order the charge dismissed. *State v. Drew*, 158 M 214, 490 P 2d 230.

Once the presumption provided for in subsection (c) has been found by the trial judge not to have been overcome, the court's discretion is limited by this act to defer the imposition of sentence as provided under subsection (2) of section 95-2206. *State v. Drew*, 158 M 214, 490 P 2d 230.

### DECISIONS UNDER FORMER LAW

#### Exclusive Nature of Statute

Marijuana seized in private residence under search warrant issued by justice of peace was unlawfully seized and warrant was void since, under former section 54-112, only district judge could issue search warrant for narcotics and no search warrant could be issued to search private residence for narcotics. The provisions of former Uniform Drug Act were sole and exclusive provisions governing issuance of search warrants authorizing lawful search

and seizure of narcotic drugs and state's contentions that statute applied only to in rem proceedings to seize and destroy contraband narcotics and did not apply to in personam proceedings against possessor which are governed by criminal code could not be sustained. *State v. Langan*, 151 M 558, 445 P 2d 565, accord, *State v. Kurland*, 151 M 569, 445 P 2d 570 (marijuana inadmissible in criminal prosecution for possession against social guest).

**54-134. Fraudulently obtaining dangerous drugs.** A person commits the offense of fraudulently obtaining dangerous drugs if he obtains or attempts to obtain a dangerous drug by (a) fraud, deceit, misrepresentation or subterfuge; (b) falsely assuming the title of, or representing himself to be a manufacturer, wholesaler, practitioner, pharmacist, owner of a pharmacy, or other persons authorized to possess dangerous drugs; (c) the use of a forged, altered or fictitious prescription; (d) the use of a false name or a false address on a prescription or; (e) the concealment of a material fact.

**History:** En. Sec. 6, Ch. 314, L. 1969.

**54-135. Altering labels on dangerous drugs.** A person commits the offense of altering labels on dangerous drugs if he affixes a false, forged, or altered label to a package or receptacle containing a dangerous drug, or otherwise misrepresents the package containing a dangerous drug.

**History:** En. Sec. 7, Ch. 314, L. 1969.

**54-136. Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs.** A person convicted of fraudulently

obtaining dangerous drugs or altering the labels on dangerous drugs shall be imprisoned in the county jail for a term not to exceed six (6) months.

**History:** En. Sec. 8, Ch. 314, L. 1969.

**54-137. Alternative sentencing authority.** A person convicted of criminal possession of dangerous drugs, fraudulently obtaining dangerous drugs or altering labels on dangerous drugs, if he is shown to be an excessive or habitual user of dangerous drugs either from the face of the record or by a presentence investigation, may in lieu of imprisonment, be committed to the custody of any institution for rehabilitative treatment for not less than six (6) months nor more than two (2) years.

**History:** En. Sec. 9, Ch. 314, L. 1969.

**54-138. Jurisdiction.** The district court shall have exclusive trial jurisdiction over all prosecutions commenced under the Montana Dangerous Drug Act.

**History:** En. Sec. 10, Ch. 314, L. 1969.

### CHAPTER 3—CONTROLLED SUBSTANCES

- Section 54-301. Definitions.
- 54-302. Administration of act—scheduling and rescheduling of drugs—findings—deviations from federal schedules—substances excluded.
- 54-303. Use of names of drugs in schedules.
- 54-304. Criteria for placement of drug in Schedule I.
- 54-305. Specific dangerous drugs included in Schedule I.
- 54-306. Criteria for placement of drug in Schedule II.
- 54-307. Specific dangerous drugs included in Schedule II.
- 54-308. Criteria for placement of drug in Schedule III.
- 54-309. Specific dangerous drugs included in Schedule III.
- 54-310. Criteria for placement of drug in Schedule IV.
- 54-311. Specific dangerous drugs included in Schedule IV.
- 54-312. Criteria for placement of drug in Schedule V.
- 54-313. Specific dangerous drugs included in Schedule V.
- 54-314. Annual republication of schedules.
- 54-315. Rules to be promulgated by board—fees.
- 54-316. Annual registration required for manufacturer, distributor or dispenser—exceptions—inspection.
- 54-317. Manufacturers and distributors registered unless against public interest—factors considered—practitioners' authority—research with Schedule I drugs—federal registration.
- 54-318. Suspension or revocation of registration—grounds.
- 54-319. Procedure for denial, suspension, revocation or refusal to renew registration.
- 54-320. Records and inventories required.
- 54-321. Order forms for drugs in Schedules I and II.
- 54-322. Prescription and medical requirements for scheduled drugs.
- 54-323. Educational programs—research—information confidential—possession of drugs by researchers.
- 54-324. Continuation of proceedings under prior law—initial registration.
- 54-325. Prior orders and rules continued in effect.
- 54-326. Uniformity of construction.
- 54-327. Practitioner's failure to register as misdemeanor—penalty.

**54-301. Definitions.** As used in this act:

(1) "Administer" means the direct application of a dangerous drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) a practitioner (or by his authorized agent), or  
(b) the patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(3) "Board" means the board of pharmacists, provided for in section 82A-1602.21.

(4) "Bureau" means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.

(5) "Dangerous drug" means a drug, substance or immediate precursor in Schedules I through V hereinafter set forth.

(6) "Counterfeit substance" means a dangerous drug which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number of device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the drug.

(7) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a dangerous drug, whether or not there is an agency relationship.

(8) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

(9) "Dispense" means to deliver a dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery.

(10) "Dispenser" means a practitioner who dispenses.

(11) "Distribute" means to deliver other than by administering or dispensing a dangerous drug.

(12) "Distributor" means a person who distributes.

(13) "Drug" means:

(a) substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(c) substances (other than food) intended to affect the structure or any function of the body of man or animals; and

(d) substances intended for use as a component of any article specified in clause (a), (b), or (c) of this subsection. It does not include devices or their components, parts or accessories.

(14) "Immediate precursor" means a substance which the board of pharmacists has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manu-



facture of a dangerous drug, the control of which is necessary to prevent, curtail, or limit manufacture.

(15) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a dangerous drug, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the drug or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a dangerous drug by an individual for his own use or the preparation, compounding, packaging, or labeling of a dangerous drug:

(a) by a practitioner as an incident to his administering or dispensing of a dangerous drug in the course of his professional practice, or

(b) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(16) "Marihuana" means all parts of the plant *cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(17) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(b) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the drugs referred to in clause (a), but not including the isoquinoline alkaloids, of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(18) "Opiate" means any drug having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as a dangerous drug under section 2 [54-302] of this act, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(19) "Opium poppy" means the plant of the species *papaver somniferum* L., except its seeds.

(20) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(21) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(22) "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state;

(b) a pharmacy or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state.

(23) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a substance or drug regulated under the provisions of this act.

(24) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(25) "Ultimate user" means a person who lawfully possesses a dangerous drug for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

(26) The term "prescription" shall be given the meaning it has in section 66-1502 (13), R. C. M. 1947.

History: En. Sec. 1, Ch. 412, L. 1973; amd. Sec. 1, Ch. 350, L. 1974.

#### Title of Act

An act to amend the Dangerous Drug Act, by adopting substantially the definitions, procedures, standards and schedules and the regulatory provisions of the uniform controlled substances act as recommended by the national conference of commissioners on uniform state laws; by excluding from such schedules non-narcotic drugs which may be lawfully sold over the counter without a prescription; by repealing sections 54-129, 54-130, 54-

131, and 66-1504.1, R. C. M. 1947; amending sections 54-132 and 54-133, R. C. M. 1947, by deleting references to section 54-131, R. C. M. 1947; amending section 54-132 by deleting the provision regarding deferred imposition of sentence; providing for severability if any part of this act is determined unconstitutional; and repealing all acts and parts of acts in conflict herewith.

#### Amendments

The 1974 amendment inserted the definitions of "Board" and "Department."

**54-302. Administration of act—scheduling and rescheduling of drugs—findings—deviations from federal schedules—substances excluded.** (1) The board of pharmacists shall administer this act and may add drugs to or delete or reschedule all drugs enumerated in the schedules in sections 54-305, 54-307, 54-309, 54-311, or 54-313, pursuant to the rule-making procedures of the Montana Administrative Procedure Act (82-4201 through 82-4225). In making a determination regarding a drug, the board shall consider the following:

- (a) the actual or relative potential for abuse;
- (b) the scientific evidence of its pharmacological effect, if known;
- (c) the state of current scientific knowledge regarding the drug;
- (d) the history and current pattern of abuse;
- (e) the scope, duration, and significance of abuse;
- (f) the risk to the public health;
- (g) the potential of the drug to produce psychic or physiological dependence liability; and
- (h) whether the drug is an immediate precursor of a drug already controlled under this act.

(2) After considering the factors enumerated in subsection (1) the board shall make findings with respect thereto and if it finds the drug has a potential for abuse it shall designate such drug a dangerous drug in the manner set forth in the Montana Administrative Procedure Act.

(3) If the board designates a drug as an immediate precursor, drugs which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(4) If any drug is designated, rescheduled, or deleted as a "controlled substance" under federal law and notice thereof is given to the board, the board shall similarly control the drug under this act after the expiration of thirty (30) days from publication in the federal register of a final order designating a drug as a "controlled substance" or rescheduling or deleting a drug, unless within that thirty (30) day period, the board objects to inclusion, rescheduling, or deletion. In that case, the board shall cause the reasons for objection to be published and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the department shall publish the board's decision, which shall be final unless altered thereafter by the board or by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this act by the board, control under this act is stayed until the board's decision is published.

(5) Authority to control under this section does not extend to distilled spirits, liquor, wine, malt beverages, beer, porter, ale, stout or tobacco.

(6) The board shall exclude any non-narcotic drug from a schedule if such drug may, under the Federal Food, Drug, and Cosmetic Act and section 27-716 (a) (2) of the Montana Food, Drug, and Cosmetic Act, be lawfully sold over the counter without a prescription.

**History:** En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "board" for "board of pharmacists" throughout the section; substituted "board shall cause the reasons for objection to be published"

in subsection (4) for "board of pharmacists shall publish the reasons for objection"; substituted "the department shall publish the board's decisions" in subsection (4) for "the board of pharmacists shall publish its decisions"; and made minor changes in phraseology, punctuation and style.

**54-303. Use of names of drugs in schedules.** The dangerous drugs listed or to be listed in the schedules in sections 54-305, 54-307, 54-309,



54-311 and 54-313 are included by whatever official, common, usual, chemical, or trade name designated.

History: En. Sec. 3, Ch. 412, L. 1973;      Amendments  
amd. Sec. 3, Ch. 350, L. 1974.

The 1974 amendment made minor changes in style.

**54-304. Criteria for placement of drug in Schedule I.** The board of pharmacists shall place a drug in Schedule I if it finds that the drug:

- (1) has high potential for abuse; and
- (2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

History: En. Sec. 4, Ch. 412, L. 1973.

**54-305. Specific dangerous drugs included in Schedule I.** (1) The dangerous drugs listed in this section are included in Schedule I.

(2) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation: acetylmethadol, allylprodine, alphacetylmethadol, alphameprodine, alphasmethadol, benzethidine, betacetylmethadol, betameprodine, betamethadol, betaprodine, clonitazene, dextromoramide, dextrophan, diampromide, diethylthiambutene, dimenoxadol, dimepheptanol, dimethylthiambutene, dioxaphetyl butyrate, dipipanone, ethylmethylthiambutene, etonitazene, etoxeridine, furethidine, hydroxypethidine, ketobemidone, levomoramide, levophenacylmorphan, morpheridine, noracymethadol, norlevorphanol, normethadone, norpipanone, phenadoxone, phenampromide, phenomorphan, phenoperidine, piritramide, proheptazine, properidine, racemoramide, and triperidine.

(3) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation: acetorphine, acetyldihydrocodeine, benzylmorphine, codeine methylbromide, codeine-n-oxide, cyprenorphine, desomorphine, dihydromorphine, etorphine, heroin, hydromorphenol, methyl-desorphine, methylhydromorphine, morphine methylbromide, morphine methylsulfonate, morphine-n-oxide, myrophine, nicocodeine, nicomorphine, normorphine, phoclodine, and thebacon.

(4) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic drugs, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: 3,4-methylenedioxy amphetamine, 5-methoxy-3,4-methylenedioxy amphetamine, 3,4,5-trimethoxy amphetamine, bufotenine, diethyltryptamine, dimethyltryptamine, 4-methyl-2,5-dimethoxyamphetamine, ibogaine, lysergic acid diethylamide, marihuana, mescaline, peyote, n-ethyl-3-piperidyl benzilate, n-methyl-3-piperidyl benzilate, psilocybin, psilocyn, tetrahydrocannabinols, 2,5-dimethoxyamphetamine.

History: En. Sec. 5, Ch. 412, L. 1973.

**54-306. Criteria for placement of drug in Schedule II.** The board of pharmacists shall place a drug in Schedule II if it finds that:

- (1) the drug has high potential for abuse;
- (2) the drug has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and
- (3) the abuse of the drug may lead to severe psychic or physical dependence.

**History: En. Sec. 6, Ch. 412, L. 1973.**

**54-307. Specific dangerous drugs included in Schedule II.** (1) The dangerous drugs listed in this section are included in Schedule II.

(2) Any of the following drugs, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(a) opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(b) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the drugs referred to in paragraph (a), but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(3) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation: alphaprodine, anileridine, bezitramide, dihydrocodeine, diphenoxylate, fentanyl, isomethadone, levomethorphan, levorphanol, metazocine, methadone, methadone-intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane, moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid, pethidine, pethidine-intermediate-a, 4-cyano-1-methyl-4-phenylpiperidine, pethidine-intermediate-b, ethyl-4-phenylpiperidine-4-carboxylate, pethidine-intermediate-c, 1-methyl-4-phenylpiperidine-4-carboxylic acid, phenazocine, piminodine, racemethorphan, and racemorphan.

(4) Any material, compound, mixture, or preparation which contains any quantity of the following drugs having a potential for abuse associated with a stimulant effect on the central nervous system:

(a) amphetamine, its salts, optical isomers, and salts of its optical isomers;

(b) phenmetrazine and its salts;

(c) any drug which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;

(d) methylphenidate.

**History: En. Sec. 7, Ch. 412, L. 1973.**

**54-308. Criteria for placement of drug in Schedule III.** The board of pharmacists shall place a drug in Schedule III if it finds that:

- (1) the drug has a potential for abuse less than the drugs listed in Schedules I and II;
- (2) the drug has currently accepted medical use in treatment in the United States; and
- (3) abuse of the drug may lead to moderate or low physical dependence or high psychological dependence.

History: En. Sec. 8, Ch. 412, L. 1973.

**54-309. Specific dangerous drugs included in Schedule III.** (1) The dangerous drugs listed in this section are included in Schedule III.

(2) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following drugs having a potential for abuse associated with a depressant effect on the central nervous system:

(a) any drug which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those drugs which are specifically listed in other schedules;

- (b) chlorhexadol;
- (c) glutethimide;
- (d) lysergic acid;
- (e) lysergic acid amide;
- (f) methyprylon;
- (g) phencyclidine;
- (h) sulfondiethylmethane;
- (i) sulfonethylmethane; and
- (j) sulfonmethane.

(3) Nalorphine.

(4) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(a) not more than one and eight tenths (1.8) grams of codeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(b) not more than one and eight tenths (1.8) grams of codeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(c) not more than three hundred (300) milligrams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(d) not more than three hundred (300) milligrams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;



(e) not more than one and eight tenths (1.8) grams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(f) not more than three hundred (300) milligrams of ethylmorphine, or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one (1) or more ingredients in recognized therapeutic amounts;

(g) not more than five hundred (500) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams, or not more than twenty-five (25) milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(h) not more than fifty (50) milligrams of morphine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) The board of pharmacists may except by rule any compound, mixture, or preparation containing any stimulant or depressant drug listed in subsections (2) and (3) from the application of all or any part of this act if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the drugs which have a stimulant or depressant effect on the central nervous system.

**History: En. Sec. 9, Ch. 412, L. 1973.**

**54-310. Criteria for placement of drug in Schedule IV.** The board of pharmacists shall place a drug in Schedule IV if it finds that:

(1) the drug has a low potential for abuse relative to drugs in Schedule III;

(2) the drug has currently accepted medical use in treatment in the United States; and

(3) abuse of the drug may lead to limited physical dependence or psychological dependence relative to the drugs in Schedule III.

**History: En. Sec. 10, Ch. 412, L. 1973.**

**54-311. Specific dangerous drugs included in Schedule IV.** (1) The dangerous drugs listed in this section are included in Schedule IV.

(2) Any material, compound, mixture, or preparation which contains any quantity of the following drugs having a potential for abuse associated with a depressant effect on the central nervous system: barbital, chloral betaine, chloral hydrate, ethchlorvynol, ethinamate, methohexital, meprobamate, methylphenobarbital, paraldehyde, petrichloral, and phenobarbital.

(3) The board of pharmacists may except by rule any compound, mixture, or preparation containing any depressant drug listed in sub-

section (2) from the application of all or any part of this act if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the drugs which have a depressant effect on the central nervous system.

History: En. Sec. 11, Ch. 412, L. 1973.

**54-312. Criteria for placement of drug in Schedule V.** The board of pharmacists shall place a drug in Schedule V if it finds that:

(1) the drug has low potential for abuse relative to the controlled drugs listed in Schedule IV;

(2) the drug has currently accepted medical use in treatment in the United States; and

(3) the drug has limited physical dependence or psychological dependence liability relative to the dangerous drugs listed in Schedule IV.

History: En. Sec. 12, Ch. 412, L. 1973.

**54-313. Specific dangerous drugs included in Schedule V.** (1) The dangerous drugs listed in this section are included in Schedule V.

(2) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one (1) or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

(a) not more than two hundred (200) milligrams of codeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;

(b) not more than two and five tenths (2.5) milligrams of diphenoxylate and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit.

History: En. Sec. 13, Ch. 412, L. 1973.

**54-314. Annual republication of schedules.** The board shall revise and the department shall republish the schedules of dangerous drugs annually.

History: En. Sec. 14, Ch. 412, L. 1973;  
amd. Sec. 4, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "board" for "board of pharmacists," and inserted "the department shall" before "republish."

**54-315. Rules to be promulgated by board—fees.** The board shall promulgate rules for its administration which are not inconsistent with this act and specifically shall levy and the department shall collect reasonable registration fees relating to the registration and control of the manufacture, distribution, and dispensing of dangerous drugs within the state; provided, however, the maximum fee for any registration shall not exceed one hundred dollars (\$100) per year.

**History:** En. Sec. 15, Ch. 412, L. 1973; for "board of pharmacists," and inserted amd. Sec. 5, Ch. 350, L. 1974. "the department shall" before "collect reasonable registration fees."

**Amendments**

The 1974 amendment substituted "board"

**54-316. Annual registration required for manufacturer, distributor or dispenser—exceptions—inspection.** (1) Every person who manufactures, distributes, or dispenses any dangerous drug within this state must, on and after January 1, 1974, obtain annually a registration issued by the department in accordance with board rules.

(2) Persons registered by the board under this act to manufacture, distribute, dispense, or conduct research with dangerous drugs may possess, manufacture, distribute, dispense, or conduct research with those drugs to the extent authorized by their registration and in conformity with the other provisions of this act.

(3) The following persons need not register and may lawfully possess dangerous drugs under this act:

(a) an agent or employee of any registered manufacturer, distributor, or dispenser of any dangerous drug if he is acting in the usual course of his business or employment;

(b) a common or contract carrier or warehouseman, or an employee thereof, whose possession of any dangerous drug is in the usual course of business or employment;

(c) an ultimate user or a person in possession of any dangerous drug pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V drug;

(d) officers and employees of the state or a political subdivision of the state, while acting in the course of their official duties.

(4) The board may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

(5) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses dangerous drugs.

(6) The board may have the establishment of a registrant or applicant for registration inspected.

**History:** En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974.

by the board of pharmacists in accordance with its rules"; substituted "board" in subsections (2) and (4) for "board of pharmacists"; substituted subsection (6) for "The board of pharmacists may inspect the establishment of a registrant or applicant for registration."

**Amendments**

The 1974 amendment substituted "issued by the department in accordance with board rules" in subsection (1) for "issued

**54-317. Manufacturers and distributors registered unless against public interest—factors considered—practitioners' authority—research with Schedule I drugs—federal registration.** (1) The board shall register an applicant to manufacture or distribute dangerous drugs included in sections 54-305, 54-307, 54-309, 54-311 and 54-313 unless it determines that the



issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

- (a) maintenance of effective controls against diversion of dangerous drugs into other than legitimate medical, scientific, or industrial channels;
- (b) compliance with applicable state and local law;
- (c) any convictions of the applicant under any federal and state laws relating to any dangerous drug;
- (d) past experience in the manufacture or distribution of dangerous drugs, and the existence in the applicant's establishment of effective controls against diversion;
- (e) furnishing by the applicant of false or fraudulent material in any application filed under this act;
- (f) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense dangerous drugs as authorized by federal law; and
- (g) any other factors relevant to and consistent with the public health and safety.

(2) Registration under subsection (1) does not entitle a registrant to manufacture and distribute dangerous drugs in Schedule I or II other than those specified in the registration.

(3) Practitioners shall be registered to dispense any dangerous drugs or to conduct research with dangerous drugs in Schedules II through V if they are authorized to dispense or conduct research under the laws of this state. The board need not require separate registration for practitioners engaging in research with nonnarcotic dangerous drugs in Schedules II through V where the registrant is already registered under this act in another capacity. Practitioners registered under federal law to conduct research with Schedule I drugs may conduct research with Schedule I drugs within this state upon furnishing the board evidence of that federal registration.

(4) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this act.

**History:** En. Sec. 17, Ch. 412, L. 1973; for "board of pharmacists" throughout  
amd. Sec. 7, Ch. 350, L. 1974. style.

**Amendments**

The 1974 amendment substituted "board"

**54-318. Suspension or revocation of registration—grounds.** (1) A registration under section 54-316 to manufacture, distribute, or dispense a dangerous drug may be suspended or revoked by the board upon a finding that the registrant:

- (a) has furnished false or fraudulent material information in any application filed under this act;
- (b) has been convicted of a felony under any state or federal law relating to any dangerous drug or controlled substance; or

(c) has had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances.

(2) The board may limit revocation or suspension of a registration to the particular dangerous drug with respect to which grounds for revocation or suspension exist.

(3) If the board suspends or revokes a registration, all dangerous drugs owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of drugs under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable drugs and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all dangerous drugs may be forfeited to the state.

(4) The board shall promptly cause the bureau to be notified of all orders suspending or revoking registration and all forfeitures of dangerous drugs.

**History:** En. Sec. 18, Ch. 412, L. 1973; for "board of pharmacists" throughout  
amd. Sec. 8, Ch. 350, L. 1974. the section; substituted "cause the bureau  
to be notified" in subsection (4) for  
"notify the bureau"; and made minor  
changes in style.

**Amendments**

The 1974 amendment substituted "board"

**54-319. Procedure for denial, suspension, revocation or refusal to re-new registration.** (1) Before denying, suspending or revoking a registration, or refusing a renewal of registration, the board shall cause to be served upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall require the applicant or registrant to appear before the board at a time and place not less than thirty (30) days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order shall be served not later than thirty (30) days before the expiration of the registration. These proceedings shall be conducted without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(2) The board may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under section 54-317 or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants such action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction.

**History:** En. Sec. 19, Ch. 412, L. 1973; for "board of pharmacists" throughout  
amd. Sec. 9, Ch. 350, L. 1974. the section; substituted "shall cause to be  
served upon the applicant" in subsection  
(1) for "shall serve upon the applicant";  
and made minor changes in style.

**Amendments**

The 1974 amendment substituted "board"

**54-320. Records and inventories required.** Persons registered to manufacture, distribute, or dispense dangerous drugs under this act shall

keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with any additional rules the board of pharmacists issues.

History: En. Sec. 20, Ch. 412, L. 1973.

**54-321. Order forms for drugs in Schedules I and II.** Dangerous drugs in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section, unless the board of pharmacists prescribes particular forms to be used.

History: En. Sec. 21, Ch. 412, L. 1973.

**54-322. Prescription and medical requirements for scheduled drugs.**

(1) No dangerous drug in Schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the board, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of section 54-319. No prescription for a Schedule II drug may be refilled.

(3) A dangerous drug included in Schedule III or IV, which is a prescription drug as determined under the federal or Montana food, drug and cosmetic acts shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six (6) months after the date thereof or be refilled more than five (5) times, unless renewed by the practitioner.

(4) A dangerous drug included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

History: En. Sec. 22, Ch. 412, L. 1973;      **Amendments**  
amd. Sec. 10, Ch. 350, L. 1974.

The 1974 amendment substituted "board" for "board of pharmacists" in subsection (2), and made a minor change in style.

**54-323. Educational programs—research—information confidential—possession of drugs by researchers.** (1) The board shall carry out educational programs designed to prevent and deter misuse and abuse of dangerous drugs. In connection with these programs it may:

(a) promote better recognition of the problems of misuse and abuse of dangerous drugs within the regulated industry and among interested groups and organizations;

(b) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of dangerous drugs;

(c) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(d) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of dangerous drugs;



(e) disseminate the results of research on misuse and abuse of dangerous drugs to promote a better public understanding of what problems exist and what can be done to combat them; and

(f) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of dangerous drugs.

(2) The board shall encourage research on misuse and abuse of dangerous drugs. In connection with the research, and in furtherance of the enforcement of this act, it may:

(a) establish methods to assess accurately the effects of dangerous drugs and identify and characterize those with potential for abuse;

(b) make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this act;

(ii) determine patterns of misuse and abuse of dangerous drugs and the social effects thereof; and

(iii) improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of dangerous drugs; and

(c) request the department to enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of dangerous drugs.

(3) The board may authorize persons engaged in research on the use and effects of dangerous drugs to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(4) The board may authorize the possession and distribution of dangerous drugs by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of dangerous drugs to the extent of the authorization.

**History:** En. Sec. 23, Ch. 412, L. 1973; amd. Sec. 11, Ch. 350, L. 1974.

for "board of pharmacists" throughout the section; and inserted "request the department to enter" at the beginning of subdivision (2)(c).

**Amendments**

The 1974 amendment substituted "board"

**54-324. Continuation of proceedings under prior law—initial registration.** (1) Prosecution for any violation of law occurring prior to the effective date of this act is not affected or abated by this act.

(2) Civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of this act are not affected by this act.

(3) All administrative proceedings pending under prior laws which are superseded by this act shall be continued and brought to a final determination in accord with the laws and rules in effect prior to the effective date of the act. Any drug controlled under prior law which is not listed

within Schedules I through V is automatically controlled without further proceedings and shall be listed in the appropriate schedule.

(4) The board of pharmacists shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any dangerous drug prior to the effective date of this act and who are registered or licensed by the state.

(5) This act applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur following its effective date.

History: En. Sec. 25, Ch. 412, L. 1973.

**54-325. Prior orders and rules continued in effect.** Any orders and rules promulgated under any law affected by this act and in effect on the effective date of this act and not in conflict with it continue in effect until modified, superseded or repealed.

History: En. Sec. 27, Ch. 412, L. 1973.

**54-326. Uniformity of construction.** This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those other states which enact it.

History: En. Sec. 28, Ch. 412, L. 1973.

**54-327. Practitioner's failure to register as misdemeanor—penalty.** Practitioners who fail or refuse to register as required by this act, shall be guilty of a misdemeanor and upon conviction therefor may be fined not to exceed one thousand dollars (\$1,000) or imprisoned in the county jail not to exceed one (1) year, or both.

History: En. Sec. 29, Ch. 412, L. 1973.

#### Separability Clause

Section 30 of Ch. 412, Laws 1973 read "If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

#### Repealing Clauses

Section 31 of Ch. 412, Laws 1973 read "The laws specified below are repealed except with respect to rights and duties which matured, penalties which were incurred and proceedings which were begun before the effective date of this act: sections 54-129, 54-130, 54-131 and 66-1504.1, R. C. M. 1947."

Section 32 of Ch. 412, Laws 1973 repealed all acts and parts of acts in conflict therewith.

## TITLE 55—NEGOTIABLE INSTRUMENTS

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

55-101 to 55-1801. (8401 to 8493, 8495 to 8597) **Repealed.**

### Repeal

These sections (Sec. 4240, Civ. C. 1895; Secs. 5842 to 5934, 5936 to 6037a, Rev. C. 1907; Secs. 8401 to 8493, 8495 to 8597,

R.C.M. 1921), the Uniform Negotiable Instruments Law, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.





# REVISED CODES OF MONTANA

## VOLUME 4

### Part 1

### 1974 Cumulative Pocket Supplement

*Containing*

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE  
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF  
SECOND REPLACEMENT VOLUME 4 (PART 1)  
OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING SECOND REPLACEMENT  
VOLUME 4 (PART 1) THROUGH VOLUME 518 PACIFIC  
REPORTER (2ND SERIES)

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# MONTANA REVISED CODES

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## TITLE 57—NUISANCES

### CHAPTER 1—NUISANCES PUBLIC AND PRIVATE—REMEDIES

#### 57-101. (8642) Nuisance defined.

##### Sufficiency of Complaint Stating Course of Action for Nuisance

Where negligence is an element of nuisance, the fact that plaintiff pleads both

negligence and nuisance as independent causes of action does not make pleading a sham. *Ekwortzel v. Parker*, 156 M 477, 482 P 2d 559.





## TITLE 58—OBLIGATIONS

### CHAPTER 4—EXTINCTION OF OBLIGATIONS BY PERFORMANCE, OFFER OF PERFORMANCE AND PREVENTION OF PERFORMANCE

#### 58-423. (7446) Extinction of pecuniary obligation.

##### Substantial Compliance

Judgment debtor's deposit in a savings account in judgment creditor's name of amount of trial court's recomputed award extinguished its obligation so that interest

did not continue to run even though deposit did not include interest already accrued and original, higher award was reinstated on appeal. *Resner v. Northern Pacific Ry.*, — M —, 505 P 2d 86.

#### 58-424. (7447) Objections to mode of offer.

##### Acts Constituting Waiver

Party who was obligated to sell shares of stock under repurchase agreement waived objections to tender by failing to object to terms of tender, conduct evidence-

ing his willingness to sell and requesting a change in payment terms. *State ex rel. Howeth v. D. A. Davidson & Co.*, — M —, 517 P 2d 722.

### CHAPTER 6—OBLIGATIONS IMPOSED BY LAW

#### 58-607. (7579) Responsibility for willful acts, negligence, etc.

##### Purpose of Statute

The purpose of this statute is twofold: (1) to fix primary responsibility and liability on the tort-feasor whose conduct occasioned the loss or injury and (2) to make the victim whole. *Haynes v. County of Missoula*, — M —, 517 P 2d 370, 377.

##### Release Void as Contrary to Public Policy

This section together with sections 13-801 (2) and 49-105 were broad enough to render illegal any exculpatory clause or release relieving a potential tort-feasor from all liability for future negligent con-

duct where such clause or release was contrary to public policy or against the public interest; release relieving county fair board from any liability to livestock while on fairgrounds was illegal and unenforceable as contrary to public policy and against public interest and precluded county from disclaiming liability in negligence action for exhibitor's horses killed in barn fire on county fairgrounds; suppression of release in exhibitor's negligence action was not error or ground for new trial. *Haynes v. County of Missoula*, — M —, 517 P 2d 370.



## TITLE 59—OFFICES AND OFFICERS

### Chapter

2. Executive officers—classification and election, 59-203.
3. Disqualifications and restrictions, 59-301.
4. Appointments, nomination and oath of office, 59-413.
5. Prohibitions and general provisions applicable to public officers, 59-501, 59-514, 59-515, 59-538, 59-539.
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16. Collective bargaining for public employees, 59-1601 to 59-1616.

## CHAPTER 2—EXECUTIVE OFFICERS—CLASSIFICATION AND ELECTION

### Section

59-203. Certain officers, how elected.

**59-203. (111) Certain officers, how elected.** The mode of election of the governor, lieutenant-governor, secretary of state, state auditor, attorney general and superintendent of public instruction is prescribed by the constitution.

**History:** En. Sec. 340, Pol. C. 1895; re-en. Sec. 128, Rev. C. 1907; re-en. Sec. 111, R. C. M. 1921; amd. Sec. 22, Ch. 100, L. 1973. Cal. Pol. C. Sec. 348.

### Amendments

The 1973 amendment deleted "state treasurer."

## CHAPTER 3—DISQUALIFICATIONS AND RESTRICTIONS

### Section

59-301. Age and citizenship.

**59-301. (410) Age and citizenship.** No person is eligible to hold civil office in this state, who at the time of his election or appointment is not of the age of eighteen (18) years or older and a citizen of this state.

**History:** En. Sec. 960, Pol. C. 1895; re-en. Sec. 342, Rev. C. 1907; re-en. Sec. 410, R. C. M. 1921; amd. Sec. 14, Ch. 240, L. 1971; amd. Sec. 1, Ch. 9, L. 1973; amd. Sec. 21, Ch. 94, L. 1973. Cal. Pol. C. Sec. 841.

### Amendments

The 1971 amendment lowered the age requirement from 21 to 19 years.

Chapter 9, Laws of 1973, substituted "eligible to hold" for "capable of holding" near the beginning of the section; reduced the minimum age from nineteen to eighteen years; and inserted "or older" near the end of the section.

Chapter 94, Laws of 1973, reduced the minimum age from nineteen to eighteen years.

### Compiler's Notes

This section was amended twice in 1973, once by Ch. 9, and once by Ch. 94. Neither amendatory act mentioned the other, but Ch. 9 incorporated the only change made by Ch. 94. Since the amendments do not appear to conflict, the compiler has used the language of Ch. 9, which embodies the changes made by both amendments.



## CHAPTER 4—APPOINTMENTS, NOMINATION AND OATH OF OFFICE

## Section

## 59-413. Oath, form of.

**59-413. (430) Oath, form of.** Members of the legislative assembly and all officers, executive, ministerial, or judicial, must, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." No other oath, declaration, or test must be required as a qualification for any office or public trust.

**History:** Ap. p. Sec. 3, p. 90, L. 1876; re-en. Sec. 575, 5th Div. Rev. Stat. 1879; re-en. Sec. 1067, 5th Div. Comp. Stat. 1887; amd. Sec. 1010, Pol. C. 1895; re-en. Sec. 362, Rev. C. 1907; re-en. Sec. 430, R. C. M. 1921; amd. Sec. 4, Ch. 7, L. 1973; amd. Sec. 23, Ch. 100, L. 1973. Cal. Pol. C. Sec. 904.

**Amendments**

Chapter 7, Laws of 1973, deleted from the oath form the clauses "and that I have not paid or contributed, or promised to pay or contribute either directly or indirectly, any money or other valuable thing to pro-

ecure my nomination or election (or appointment), except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of this state, or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or nonperformance of any act or duty pertaining to my office other than the compensation allowed by law"; and made minor changes in style.

Chapter 100, Laws of 1973, deleted the same clauses as did Chapter 7.

**59-414. (431) Repealed.****Repeal**

Section 59-414 (Sec. 1011, Pol. C. 1895), relating to the taking of the oath by

members of the legislature, was repealed by Sec. 6, Ch. 7, Laws 1973.

CHAPTER 5—PROHIBITIONS AND GENERAL PROVISIONS  
APPLICABLE TO PUBLIC OFFICERS

## Section

59-501. Certain officers and employees not to be interested in contracts.

59-514: Destruction of old county records may be ordered by commissioners with approval of department of intergovernmental relations—destruction of old school district records may be ordered by trustees with approval of the department of intergovernmental relations.

59-515. Destruction of old city or town records.

59-538. Expenses of persons in state service—per diem allowance.

59-539. Computation of per diem allowance.

**59-501. (444) Certain officers and employees not to be interested in contracts.** Members of the legislature, state, county, city, town, or township officers or any deputy or employee thereof, must not be interested in any contract made by them in their official capacity, or by any body, agency, or board of which they are members or employees. In this section:

(1) The term "be interested in" does not include holding a minority interest in a corporation.

(2) The term "contract" does not include:

a. contracts awarded to the lowest responsible bidder based on competitive bidding procedures, or

- b. merchandise sold to the highest bidder at public auctions, or
- c. investments or deposits in financial institutions which are in the business of loaning or receiving money, or
- d. contracts for professional services.

**History:** En. Sec. 1020, Pol. C. 1895; re-en. Sec. 368, Rev. C. 1907; re-en. Sec. 444, R. C. M. 1921; amd. Sec. 1, Ch. 43, L. 1973. Cal. Pol. C. Sec. 920.

lature" for "legislative assembly"; extended the first sentence to deputies and employees; inserted "agency" and "employees" in the final clause of the first sentence; and added the definitions.

#### Amendments

The 1973 amendment substituted "legis-

**59-514. (455.2) Destruction of old county records may be ordered by commissioners with approval of department of intergovernmental relations—destruction of old school district records may be ordered by trustees with approval of the department of intergovernmental relations.** (1) A county officer may destroy old worthless reports, papers, or records in his office that have served their purpose and that are substantiated by permanent records, upon the order of the board of county commissioners and with the approval of the department of intergovernmental relations.

(2) A school officer may destroy old worthless reports, papers, or records in his office that have served their purpose and that are substantiated by permanent records, upon the order of the board of trustees and with the approval of the department of intergovernmental relations.

**History:** En. Sec. 2, Ch. 92, L. 1935; amd. Sec. 1, Ch. 166, L. 1967; amd. Sec. 79, Ch. 348, L. 1974.

ences to the department of intergovernmental relations throughout the section for references to the state examiner; and made minor changes in punctuation and phraseology.

#### Amendments

The 1974 amendment substituted refer-

**59-515. (455.3) Destruction of old city or town records.** A city or town officer may destroy old worthless reports, papers, or records in his office that have served their purpose and that are substantiated by permanent records, upon the order of the city or town council or commission and with the approval of the department of intergovernmental relations, except that records relating to the operation of any public utility by a city or town may be destroyed without the approval of the department of intergovernmental relations after the expiration of the period during which they must be kept by said city or town as specified in the appropriate regulations of the public service commission of Montana.

**History:** En. Sec. 3, Ch. 92, L. 1935; amd. Sec. 1, Ch. 65, L. 1974; amd. Sec. 80, Ch. 348, L. 1974.

a composite section embodying the changes made by both amendments.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 65 and once by Ch. 348. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made

#### Amendments

Chapter 65, Laws of 1974, substituted "department of intergovernmental relations" near the middle of the section for "state examiner"; and added the exception at the end of the section.

Chapter 348, Laws of 1974, substituted "department of intergovernmental relations" for "state examiner" and made a minor change in phraseology.

**59-538. Expenses of persons in state service—per diem allowance.**

Every person engaged in any service in every department of state, except the governor, the lieutenant governor, and the attorney general, state auditor, superintendent of public instruction, public service commissioners, secretary of state, state treasurer, clerk of the supreme court and justices of the supreme court who shall be paid actual and necessary expenses as hereinafter provided exclusive of persons in appointive positions, or positions created by law, whose duties consist of full or partial time in traveling to perform any service for the state under monthly or yearly salary, or who may be sent by any authorized executive of any department of the state upon a mission in performance of any clerical work, supervisory or extension work or otherwise, of every kind and character, shall be allowed, for the time engaged in such travel, sixteen dollars (\$16) per day for such travel within the state of Montana, and for travel outside the state of Montana the sum of twenty-five dollars (\$25) per day for meals and other necessary expenses; except that for travel within the District of Columbia the sum of thirty dollars (\$30) per day shall be allowed and provided, that the provisions of this act shall not apply to persons holding offices specifically provided for in section 93-305, or section 93-313; provided that nothing herein contained shall be construed as affecting the validity of section 43-310. The governor shall be authorized actual and necessary expenses not to exceed sixty dollars (\$60) per day when engaged in state service away from Helena, Montana. The lieutenant governor, when directed by the governor to engage in state service, the attorney general, state auditor, superintendent of public instruction, public service commissioners, secretary of state, state treasurer, clerk of supreme court and justices of supreme court shall be authorized actual and necessary expenses not to exceed forty dollars (\$40) per day while engaged in state service away from Helena, Montana.

**History:** En. Sec. 2, Ch. 66, L. 1955; amd. Sec. 1, Ch. 207, L. 1957; amd. Sec. 1, Ch. 108, L. 1961; amd. Sec. 1, Ch. 116, L. 1963; amd. Sec. 1, Ch. 48, L. 1967; amd. Sec. 1, Ch. 273, L. 1969; amd. Sec. 1, Ch. 10, L. 1971; amd. Ch. 295, L. 1971; amd. Sec. 3, Ch. 495, L. 1973; amd. Sec. 22, Ch. 315, L. 1974.

**Amendments**

Chapter 10, Laws of 1971, inserted before the first proviso the exception relating to travel in the District of Columbia.

Chapter 295, Laws of 1971, inserted "the lieutenant governor" near the beginning of the first sentence; deleted a former third proviso excepting elective state of-

ficers; added "when engaged in state service away from Helena, Montana" to the end of the second sentence; inserted "The lieutenant governor, when directed by the governor to engage in state service" at the beginning of the third sentence; and inserted "Helena" at the end of the third sentence.

The 1973 amendment increased the per diem for travel within the state from \$13.50 to \$16.00; and increased the per diem for travel outside the state from \$22.50 to \$25.00.

The 1974 amendment substituted "public service commissioners" for "railroad commissioners" throughout the section.

**59-539. Computation of per diem allowance.** In computing the per diem in lieu of subsistence for continuous travel of more than twenty-four (24) hours, the calendar day, midnight to midnight, shall be the unit, and for fractional parts of a day at the commencement or ending of such continuous travel, constituting a travel period, one-fourth ( $\frac{1}{4}$ ) of the rate for a calendar day shall be allowed for each period of six (6) hours or fraction thereof. When a change in the per diem rate is made during a day, the rate of per



diem in effect at the beginning of the quarter in which the change occurs shall continue to the end of such quarter. Except as herein provided, for continuous travel of twenty-four (24) hours or less, constituting a travel period, such period shall be regarded as commencing with the beginning of the travel and ending with the completion thereof, and for each six (6) hour portion of the period or fraction thereof one-fourth ( $\frac{1}{4}$ ) of the rate for a calendar day shall be allowed. For persons in state service regularly assigned to an 8 a. m. to 5 p. m. work period, the only per diem allowance shall be an amount not to exceed two dollars (\$2) per day for moneys actually expended for mid-day meals when the departure is at or after 7 a. m. and the return on the same day is at or prior to 6:00 p. m. For persons in state service regularly assigned to work periods other than 8 a. m. to 5 p. m., the employing department may establish a per diem allowance of an amount not to exceed one dollar and fifty-cents (\$1.50) for moneys actually expended for morning meals and three dollars and fifty cents (\$3.50) for moneys actually expended for evening meals. In no case shall any per diem or allowance whatsoever be paid for any absence not exceeding three (3) hours.

**History:** En. Sec. 3, Ch. 66, L. 1955; amd. Sec. 4, Ch. 495, L. 1973; amd. Sec. 1, Ch. 213, L. 1974.

#### Amendments

The 1973 amendment increased the allowance per day for mid-day meals from \$1.25 to \$2.00, near the end of the first sentence.

The 1974 amendment inserted "Except

as herein provided" at the beginning of the third sentence; deleted a proviso from the third sentence which read "no per diem, excepting an allowance not to exceed two dollars (\$2) per day for moneys actually expended for mid-day meals, shall be allowed when the departure is at or after 8:00 a. m. and the return on the same day is at or prior to 6:00 p. m."; and inserted the fourth and fifth sentences.

## CHAPTER 6—RESIGNATIONS AND VACANCIES

### Section

59-605. Vacancies, how filled when not otherwise provided for—recess appointments.  
59-609. Elective officer's inability to perform—filling vacancy.

**59-605. (514) Vacancies, how filled when not otherwise provided for—recess appointments.** (1) When any office becomes vacant, and no mode is provided by law for filling the vacancy, the governor shall fill the vacancy by appointing a qualified person to fill the unexpired term of the person whose office became vacant.

(2) If the legislature or one (1) house of the legislature must confirm an appointment of a person appointed by the governor to fill a vacancy, the governor may appoint the person to assume office before the legislature meets in its next regular session to consider the appointment. A person so appointed is vested with all the functions of the office upon assuming the office, and is a de jure officer, notwithstanding the fact that the legislature has not yet confirmed the appointment. If the legislature does not confirm the appointment, the governor shall make a new appointment to fill the unexpired term.

**History:** En. Sec. 1104, Pol. C. 1895; re-en. Sec. 423, Rev. C. 1907; re-en. Sec. 514, R. C. M. 1921; amd. Sec. 1, Ch. 388, L. 1973. Cal. Pol. C. Sec. 999.

#### Amendments

The 1973 amendment designated the en-

tire former section as subsection (1); substituted "appointing a qualified person to fill the unexpired term of the person whose office became vacant" for "granting a commission, to expire at the end of the next legislative assembly or at the next election by the people" at the end

of subsection (1); added subsection (2); and made minor changes in style.

**Repealing Clause**

Section 2 of Ch. 388, Laws 1973 read "Section 59-606, R. C. M. 1947, is repealed."

**59-606. (515) Repealed.****Repeal**

Section 59-606 (Sec. 1105, Pol. C. 1895), relating to vacancies occurring during a

recess of the legislature, was repealed by Sec. 2, Ch. 388, Laws 1973. For new law, see sec. 59-605.

**59-609. Elective officer's inability to perform—filling vacancy. (1)**

When an incumbent in the office of lieutenant governor, secretary of state, attorney general, auditor, or superintendent of public instruction is found to be permanently unable to perform the functions of his position, a vacancy exists.

(2) When a written declaration, made as hereinafter provided, is transmitted to the legislature, that any such officer is unable to discharge the powers and duties of this office, the legislature may convene in the manner provided for the convening of special sessions to determine whether such disability exists, or it may defer such determination to the next regular session of the legislature.

(3) If the legislature, within twenty-one (21) days after convening, whether in regular or special session, determines by two-thirds (2/3) vote of its members that such officer is unable to discharge the powers and duties of his office, this office shall be declared to be vacant and shall be filled as provided by the constitution of the state of Montana or laws enacted pursuant thereto.

(4) The written declaration required hereunder shall be made and transmitted by the lieutenant governor and attorney general unless one of them is the officer whose disability is in question. If the lieutenant governor is the subject of the declaration, the declaration shall be made by the governor and attorney general; if the attorney general is the subject of the declaration, the declaration shall be made by the governor and secretary of state.

**History:** En. Sec. 1, Ch. 343, L. 1973.

**Title of Act**

An act to provide a method to deter-

mine permanent disability of executive officers to implement article VI, section 6(2) of the 1972 Montana constitution.

**CHAPTER 7—THE FISCAL YEAR—OFFICIAL REPORTS****Section**

59-701.1. Reappropriation of valid obligations at end of each fiscal year.

59-701.2. Obligations at fiscal year end shall be encumbered.

**59-701. (518) Fiscal year and financial reports.****Compiler's Notes**

Section 98, Ch. 326, Laws 1974, substi-

tuted "department of administration" in this section for "state controller."

**59-701.1. Reappropriation of valid obligations at end of each fiscal year.**

Purchase orders issued and accrued expenses approved by the department of administration shall be encumbered at the end of each fiscal year in the

department of administration's accounts, and are hereby reappropriated for the succeeding fiscal year.

History: En. Sec. 2, Ch. 84, L. 1955; amd. Sec. 1, Ch. 267, L. 1971; amd. Sec. 98, Ch. 326, L. 1974.

#### Amendments

The 1971 amendment deleted "Accounting control of all" at the beginning of the section; inserted "and accrued expenses approved" after "issued"; substituted "shall be" before "encumbered" for "which are";

deleted "because of incompleteness of the contract" after "accounts"; substituted "and are hereby" before "reappropriated" for "shall be"; deleted "and re-encumbered" after "appropriated"; and made a minor change in phraseology.

The 1974 amendment substituted "department of administration" in two places for "state controller."

**59-701.2. Obligations at fiscal year end shall be encumbered.** Any valid obligation not paid within the fiscal year shall be encumbered for payment thereof at the end of each fiscal year in the department of administration's accounts. An appropriation shall be deemed to be encumbered at the time and to the extent that a valid obligation against the appropriation is created, except construction contracts, which upon approval of the department of administration, may be encumbered for only that portion of the contract for which services or materials have been received by the fiscal year's end.

History: En. Sec. 3, Ch. 84, L. 1955; amd. Sec. 3, Ch. 127, L. 1961; amd. Sec. 2, Ch. 267, L. 1971; amd. Sec. 98, Ch. 326, L. 1974.

wrote the section. For previous text, see parent volume.

The 1974 amendment substituted "department of administration" in two places for "state controller."

#### Amendments

The 1971 amendment completely re-

### CHAPTER 8—MILEAGE OF PUBLIC OFFICERS

#### Section

59-801. Mileage of all officers.

59-802. Mileage of all officers—liability of approving board for exceeding authorized amount.

**59-801. (4884) Mileage of all officers.** (1) Members of the legislative assembly, state officers, township officers, jurors, witnesses, county agents, and all other persons, except sheriffs, who may be entitled to mileage, when using their own automobiles or airplanes in the performance of official duties, shall be entitled to collect mileage for the distance actually traveled by automobile, and for the shortest regularly traveled automobile route when travel is by private plane, and no more unless otherwise specifically provided by law; provided, however, that nothing herein contained shall be construed as affecting the validity of section 43-310.

(2) Where the individual is authorized to operate a privately owned vehicle even though a state owned vehicle is available, a rate of nine cents (9¢) per mile shall be paid.

(3) Where a privately owned vehicle is used because a state owned or leased vehicle is not available for use or it is in the best interest of the state that a privately owned vehicle be used, twelve cents (12¢) per mile shall be paid.

History: En. Sec. 4590, Pol. C. 1895; 4884, R. C. M. 1921; amd. Sec. 1, Ch. 16, re-en. Sec. 3111, Rev. C. 1907; re-en. Sec. L. 1933; amd Sec. 1, Ch. 121, L. 1941;



amd. Sec. 1, Ch. 201, L. 1947; amd. Sec. 1, the  
Ch. 93, L. 1949; amd. Sec. 1, Ch. 124, L.  
1951; amd. Sec. 1, Ch. 106, L. 1961; amd.  
Sec. 1, Ch. 123, L. 1963; amd. Sec. 2,  
Ch. 48, L. 1967; amd. Sec. 1, Ch. 495, L.  
1973; amd. Sec. 9, Ch. 355, L. 1974.

#### Amendments

The 1973 amendment increased the auto-  
mobile mileage rate from nine cents to  
twelve cents; and substituted "per mile by

the shortest regularly traveled automo-  
bile route when travel is by private  
plane" for "per air mile for the distance  
actually traveled by airplane."

The 1974 amendment deleted "at a rate  
of twelve cents (12¢) per mile" from after  
"entitled to collect mileage" and before  
"for the shortest regularly traveled auto-  
mobile route" in subsection (1); added  
subsections (2) and (3); and made minor  
changes in phraseology and style.

**59-802. (4884.1) Mileage of all officers—liability of approving board for exceeding authorized amount.** Whenever it shall be necessary for any state or county officer or employee to use his own automobile or airplane in the performance of any official duty where traveling expense is allowed by law, such officer or employee, except sheriffs, shall receive twelve cents (12¢) per mile for each mile necessarily traveled by automobile and twelve cents (12¢) per mile by the shortest regularly traveled automobile route when travel is by private plane, and no more unless otherwise specifically provided by law and the members of any lawful approving board shall be liable upon their official bonds, for any claim which they may allow in excess of such amount; provided, however, that nothing herein contained shall be construed as affecting the validity of section 43-310. It is necessary for an individual to use his own vehicle where it has been determined that a state vehicle is not available for use or that it is in the best interest of the state that a privately owned vehicle be used.

History: En. Sec. 1, Ch. 80, L. 1923;  
amd. Sec. 3, Ch. 16, L. 1933; amd. Sec. 2,  
Ch. 121, L. 1941; amd. Sec. 2, Ch. 201, L.  
1947; amd. Sec. 2, Ch. 93, L. 1949; amd.  
Sec. 2, Ch. 124, L. 1951; amd. Sec. 2, Ch.  
106, L. 1961; amd. Sec. 2, Ch. 123, L.  
1963; amd. Sec. 3, Ch. 48, L. 1967; amd.  
Sec. 2, Ch. 495, L. 1973; amd. Sec. 10, Ch.  
355, L. 1974.

#### Amendments

The 1973 amendment increased the auto-

mobile mileage rate from nine cents to  
twelve cents; substituted "per mile by  
the shortest regularly traveled automo-  
bile route when travel is by private plane"  
for "per air mile for each mile necessar-  
ily traveled by airplane"; and inserted  
"and no more" before "unless otherwise  
specifically provided by law."

The 1974 amendment added the final  
sentence.

## CHAPTER 9—CLASSIFICATION AND COMPENSATION OF STATE EMPLOYEES

### Section

59-903. Definitions.

59-904. Officers and employees excepted from provisions of act.

59-905. Personnel classification plan—development.

59-906. Guidelines for classification.

59-907. Review of positions—change in classification.

59-908. List of positions maintained—contents.

59-909. Determination of number and classes of employees in each agency—submission to governor.

59-910. Department authorization for increase of salary or wage of class.

59-911. Department authorization for increase in number and class of positions of agency.

59-912. No limitation on legislative authority.

59-913. Functions and duties of department—delegation of authority—policies.

59-914. Merit system continued.

**59-901, 59-902. Repealed.****Repeal**

Sections 59-901 and 59-902 (Secs. 1, 2, Ch. 30, L. 1943; Sec. 2, Ch. 176, L. 1949; Sec. 17, Ch. 251, L. 1953), authorizing the state board of examiners to fix the number, salaries and terms of assistants to state officers, were repealed by Sec. 3, Ch. 272, Laws 1971. Sec. 6, Ch. 272, Laws

1971 provided that repeal be effective upon the date the governor signs an executive order implementing chapter 2 of Title 82A, or on December 31, 1972, whichever occurs first. Executive Reorganization Order 4-71, signed by the Governor and effective on August 20, 1971, accomplished that purpose.

**59-903. Definitions.** For the purposes of this act:

- (1) "Agency" means any department, board, commission, office, bureau, institution or unit of state government recognized in the state budget.
- (2) "Department" means the department of administration.
- (3) "Program" means a combination of planned efforts to provide a service.
- (4) "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

**History:** En. Sec. 1, Ch. 440, L. 1973.

**Title of Act**

An act to provide that the department of administration shall develop a wage and salary plan for state employees for submission to the 1975 legislature and be granted immediate authority to develop

a personnel classification plan; providing that salary increases, changes in position classifications and changes in number of employees must be approved by the department of administration; and creating a board for the hearing of grievances that result from the implementation of this act.

**59-904. Officers and employees excepted from provisions of act.** This act does not apply to the following positions in state government:

- (1) elected officials and their chief deputy and executive secretary;
- (2) officers and employees of the legislative branch;
- (3) judges and employees of the judicial branch;
- (4) members of boards and commissions appointed by the governor, appointed by the legislature or appointed by other elected state officials;
- (5) officers or members of the militia;
- (6) agency heads appointed by the governor;
- (7) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;
- (8) personal staff of the elected officials enumerated in Article VI, section 1, of the constitution of Montana are exempt from sections 59-909, 59-910, and 59-911 of this act, and section 82A-1014.

**History:** En. Sec. 2, Ch. 440, L. 1973; amd. Sec. 1, Ch. 256, L. 1974.

tracts" in subdivision (7); added subdivision (8); and made a minor change in punctuation.

**Amendments**

The 1974 amendment inserted "and employees" in the caption and in subdivisions (2) and (3); added "and their chief deputy and executive secretary" to subdivision (1); inserted "and professional administrative" and "with individual con-

**Effective Date**

Section 2 of Ch. 256, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 21, 1974.

**59-905. Personnel classification plan—development.** The department shall develop a personnel classification plan for all state positions and classes of positions in state service, following hearings involving affected employees and employee organizations, except those exempt in section 2 [59-904] of this act.

History: En. Sec. 3, Ch. 440, L. 1973.

**59-906. Guidelines for classification.** (1) In providing for the classification plan the department shall group all positions in the state service into defined classes based on similarity of duties performed, responsibilities assumed, and complexity of work so that:

- (a) similar qualifications of education, experience, knowledge, skill and ability can be required of applicants for each position in the class;
- (b) the same title can be used to identify each position in the class;
- (c) similar pay may be provided, under the same conditions, with equity to each position within the class.

- (2) A class may consist of only one (1) position.

History: En. Sec. 4, Ch. 440, L. 1973.

**59-907. Review of positions—change in classification.** The department shall continuously review all positions on a regular basis and adjust classifications to reflect significant changes in duties and responsibilities; provided, however, employees and employee organizations will be given the opportunity to appeal any changes in classifications or positions.

History: En. Sec. 5, Ch. 440, L. 1973.

#### Temporary Provisions

Section 6 of Ch. 440, Laws 1973 read "The department shall develop a wage and salary plan for presentation to the 1975 legislature. If adopted by the 1975 legislature, the wage and salary plan shall be integrated with the personnel classification plan to ensure that positions within classes are paid at similar rates of pay after considering different rates of pay that may result from merit increases and years of state service."

Section 7 of Ch. 440, Laws 1973 read

"In developing the wage and salary plan the department shall consider all factors, including the results of meetings with employees and employee organizations, that are necessary to ensure that the plan will continuously enable the state service to attract and retain an adequate number of professional, technical and administrative personnel."

Section 8 of Ch. 440, Laws 1973 read "The wage and salary plan shall not decrease the current wage or salary or the value of fringe benefits provided by law to an employee in the state service before the adoption of the plan."

**59-908. List of positions maintained—contents.** To facilitate state budgeting, and as directed by the department, each agency shall maintain a list of current authorized positions, the number of positions in each class and the salaries or wages being paid, appropriated or proposed for each class.

History: En. Sec. 9, Ch. 440, L. 1973.

**59-909. Determination of number and classes of employees in each agency—submission to governor.** Based on documentation to be submitted by each agency, the department shall determine the number and classes of positions or number of employees of each agency or program thereof and submit the determinations to the governor for approval or amendment before the beginning of each fiscal year. At any time, upon request of the



agency, the department may, with the approval of the governor, amend the number and classes of positions or number of employees in any agency or program thereof. This section does not limit legislative authority to amend the determinations of the department.

History: En. Sec. 10, Ch. 440, L. 1973.

**59-910. Department authorization for increase of salary or wage of class.** An agency may not increase the salary or wage of any class of positions without authorization of the department.

History: En. Sec. 11, Ch. 440, L. 1973.

**59-911. Department authorization for increase in number and class of positions of agency.** An agency may not increase the number and class of positions under its authority without the authorization of the department.

History: En. Sec. 12, Ch. 440, L. 1973.

**59-912. No limitation on legislative authority.** This act does not limit the authority of the legislature relative to appropriations for salary and wages; and the department shall adjust its determinations in accordance with legislative appropriations.

History: En. Sec. 13, Ch. 440, L. 1973.

**59-913. Functions and duties of department—delegation of authority—policies.** (1) The department shall:

(a) encourage and exercise leadership in the development of effective personnel administration within the several agencies in the state, and make available the facilities of the department to this end;

(b) foster and develop programs for the improvement of employee effectiveness including training, safety, health, counseling and welfare;

(c) investigate from time to time the operation and effect of this act and the policies made thereunder and report the findings and recommendations to the governor;

(d) establish policies, procedures and forms for the maintenance of records of all employees in the state service;

(e) apply and carry out this act and the policies thereunder, and perform any other lawful acts which may be necessary or desirable to carry out the purposes and provisions of this act.

(2) The department may delegate authority granted to it under this chapter to agencies in the state service that effectively demonstrate the ability to carry out the provisions of this act, provided that such agencies remain in compliance with policies, procedures, time tables and standards established by the department.

(3) The department shall issue personnel policies for the state. Adequate public notice shall be given to all interested parties of proposed changes or additions to the personnel policies before the date they are to take effect. If requested by any of the affected parties, the department shall schedule a public hearing on proposed changes or additions to the personnel policies before the date they are to take effect.

History: En. Sec. 14, Ch. 440, L. 1973.

**59-914. Merit system continued.** The merit system, established in 1940 by certain state agencies of state government, as a requirement for receipt of federal funds, shall continue to operate for those agencies under the policies and procedures established by the merit system council.

**History:** En. Sec. 16, Ch. 440, L. 1973.

**Separability Clause**

Section 17 of Ch. 440, Laws 1973 read  
 "If a part of this act is invalid, all valid  
 parts that are severable from the invalid

parts remain in effect. If part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application."

**CHAPTER 10—LEAVES OF ABSENCE OF EMPLOYEES**

**Section**

- 59-1001. Annual vacation leave.
- 59-1002. Accumulation of leave.
- 59-1003. Separation from service or transfer to other department—cash for unused vacation leave upon termination.
- 59-1005. Absence because of illness not chargeable against vacation unless approved by employee.
- 59-1007.1. Definitions.
- 59-1008. Sick leave.
- 59-1009. Observance of holiday falling on an employee's day off.
- 59-1010. Jury duty—service as witness.

**59-1001. Annual vacation leave.** (1) Each full-time employee of the state, or any county or city thereof is entitled to and shall earn annual vacation leave credits from the first full pay period of employment. For calculating vacation leave credits two thousand eighty (2,080) hours (52 weeks x 40 hours) shall equal one (1) year. Proportionate vacation leave credits shall be earned and credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of twelve (12) calendar months. Persons regularly employed nine (9) or more months each year, but whose continuous employment is interrupted by the seasonal nature of the position, shall earn vacation credits. However, such persons must be employed twelve (12) qualifying months before they can use the vacation credits. In order to qualify, such employees must immediately report back for work when operations resume in order to avoid a break in service. Vacation leave credits shall be earned in accordance with the following schedule:

- (a) from one (1) full pay period through ten (10) years of employment at the rate of fifteen (15) working days for each year of service;
- (b) after ten (10) years through fifteen (15) years of employment at the rate of eighteen (18) working days for each year of service;
- (c) after fifteen (15) years through twenty (20) years of employment at the rate of twenty-one (21) working days for each year of service;
- (d) after twenty (20) years of employment at the rate of twenty-four (24) working days for each year of service.

Permanent part-time employees are entitled to prorated annual vacation benefits if they have regularly scheduled work assignments and normally work at least twenty (20) hours each week of the pay period and have worked the qualifying period.

(2) It shall be unlawful for an employer to terminate or separate an employee from his employment in an attempt to circumvent the provisions of this law. Should a question arise under this paragraph, it shall be submitted to arbitration as provided in chapter 201, Title 93, R.C.M., 1947 unless there is a collective bargaining agreement applicable.

**History:** En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. Sec. 2, Ch. 476, L. 1973.

#### Compiler's Notes

This section was amended twice in 1973, once by Ch. 360 and once by Ch. 476. Neither amendatory act mentioned the other. The compiler has made a composite section embodying the nonconflicting changes made by both amendments. In so far as the two amendments may conflict in the wording of subdivision (1) (a), the compiler has used the language of Ch. 476, the later of the two in time of approval.

#### Amendments

The 1971 amendment deleted "for a period of one (1) year from the date of employment" before "is entitled to" in the first sentence; substituted "shall earn annual vacation leave credit from the first full calendar month of employment" at the end of the first sentence for "shall be granted annual vacation leave with full pay"; inserted the present fourth sentence; substituted "one (1) month through" at the beginning of subdivision (a) for "one (1) year to"; substituted "eleven (11) years through" at the beginning of subdivision (b) for "ten (10) years to"; substituted "sixteen (16) years through" at the beginning of subdivision (c) for "fifteen (15) years to"; and made minor changes in phraseology.

Chapter 360, Laws of 1973, substituted "the first full pay period" for "one (1) month" in subdivision (1) (a); and added subsection (2).

Chapter 476, Laws of 1973, inserted "full-time" before "employee" near the beginning of subsection (1); deleted "who is in continuous employment and service of the state, county or city thereof" before "is entitled" in the first sentence of

subsection (1); substituted "pay period of employment" at the end of the first sentence of subsection (1) for "calendar month of employment"; inserted the second and third sentences in subsection (1); substituted "vacation leave with pay" in the fourth sentence of subsection (1) for "leave with full pay"; inserted the fifth, sixth and seventh sentences in subsection (1); substituted "one (1) full pay period" near the beginning of subdivision (1) (a) for "one (1) month"; converted the vacation leave credit statements in the lettered subdivisions of subsection (1) from monthly to annual allowances; substituted "after ten (10) years" at the beginning of subdivision (1) (b) for "from eleven (11) years"; substituted "after fifteen (15) years" at the beginning of subdivision (1) (c) for "from sixteen (16) years"; added the final paragraph of subsection (1); and made minor changes in phraseology and style.

#### Employees

Term "employees" was used in this section in its generic sense to include all employees of state or its agencies, including nonteaching school district employees. Teamsters, Chauffeurs, Warehousemen & Helpers, Local No. 45 v. Cascade County School Dist. No. 1, — M —, 511 P 2d 339.

#### School District Employees

Full time nonteaching employees of county school district were entitled to vacation benefits under this section, adjusted retroactively to date of their employment subject to the two-year statute of limitations placed upon liability created by statute and reduced by vacation benefits received under contract negotiations or administrative regulations. Teamsters, Chauffeurs, Warehousemen & Helpers, Local No. 45 v. Cascade County School Dist. No. 1, — M —, 511 P 2d 339.

**59-1002. Accumulation of leave.** Annual vacation leave may be accumulated to a total not to exceed two (2) times the maximum number of days earned annually as of the last day of any calendar year.

**History:** En. Sec. 2, Ch. 131, L. 1949; amd. Sec. 2, Ch. 350, L. 1969; amd. Sec. 2, Ch. 121, L. 1971; amd. Sec. 1, Ch. 148, L. 1974.

#### Amendments

The 1971 amendment added "as of the

last day of any calendar year" at the end of the section.

The 1974 amendment substituted "two (2) times the maximum number of days earned annually" for "thirty (30) working days."



**Effective Date**

Section 3 of Ch. 121, Laws 1971 provided the act should be in effect from

and after its passage and approval. Approved March 1, 1971.

**59-1003. Separation from service or transfer to other department—cash for unused vacation leave upon termination.** An employee who terminates his employment with the state, or any county or city thereof, for reason not reflecting discredit on himself, shall be entitled upon the date of such termination to cash compensation for unused vacation leave, assuming that the employee has worked the qualifying period set forth in section 59-1001 (1) above. However, if an employee transfers between agencies of the same state, county or city jurisdiction there shall be no cash compensation paid for unused vacation leave. In such a transfer the receiving agency assumes the liability for the accrued vacation credits transferred with the employee.

**History:** En. Sec. 3, Ch. 131, L. 1949; amd. Sec. 3, Ch. 350, L. 1969; amd. Sec. 3, Ch. 476, L. 1973.

**Amendments**

The 1973 amendment substituted "who terminates his employment with" for "who is separated from the service of" near the beginning of the first sentence; deleted "or any employee transferred to or employed in another division or department of the state, or any county or city thereof" following "for reason not re-

flecting discredit on himself" in the first sentence; substituted "termination" for "separation from" in the middle of the first sentence; deleted "transfer to or acceptance of new employment within the state, county, or city service" following "termination" in the middle of the first sentence; added "assuming that the employee has worked the qualifying period set forth in section 59-1001 (1) above" to the end of the first sentence; and added the second and third sentences.

**59-1005. Absence because of illness not chargeable against vacation unless approved by employee.** Absence from employment by reason of illness shall not be chargeable against unused vacation leave credits unless approved by the employee.

**History:** En. Sec. 5, Ch. 131, L. 1949; amd. Sec. 5, Ch. 350, L. 1969; amd. Sec. 4, Ch. 476, L. 1973.

**Amendments**

The 1973 amendment substituted "unused vacation leave credits" for "annual vacation leave"; and added "unless approved by the employee."

**59-1007.1. Definitions.** For the purpose of this act:

(1) "Agency" means any legally constituted department, board or commission of state, county or city government.

(2) "Employee" means any person employed by the state, county or city governments.

(3) "Permanent employee" means an employee who regularly works for more than six (6) months in any twelve (12) month period.

(4) "Part-time employee" means an employee who normally works less than forty (40) hours a week.

(5) "Full-time employee" means an employee who normally works forty (40) hours a week.

(6) "Temporary position" means a position created for a definite period of time but not to exceed six (6) months and the position is not renewable.

(7) "Seasonal position" means a position which, although temporary in nature, regularly occurs from season to season or from year to year.

(8) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation or personal business at the request of the employee and with the concurrence of the employer.

(9) "Sick leave" means a leave of absence with pay for a sickness suffered by an employee or his immediate family.

(10) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service of more than five (5) working days.

(11) "Continuous employment" means working within the same jurisdiction without a break in service of more than five (5) working days or without a continuous absence without pay of more than fifteen (15) working days.

(12) "Break in service" means that period of time an employee takes to change employment from one agency to employment in another agency of the same jurisdiction.

History: En. Sec. 1, Ch. 476, L. 1973.

**Title of Act**

An act to amend sections 59-1001, 59-1003, 59-1005 and 59-1008, R. C. M. 1947;

to provide laws for administering annual vacation and sick leave benefits for all employees of state, county and city governments; and to add a new section to provide for jury leave for public employees.

**59-1008. Sick leave.** (1) Each full-time employee of the state, or of any county or city thereof, is entitled to and shall earn sick leave credits from the first full pay period of employment. For calculating sick leave credits two thousand eighty (2,080) hours (52 weeks x 40 hours) shall equal one (1) year. Proportionate sick leave credits shall be earned and credited at the end of each pay period. Sick leave credits shall be earned at the rate of twelve (12) working days for each year of service without restriction as to the number of working days he may accumulate.

(2) An employee may not accrue sick leave credits during a continuous leave of absence without pay, which exceeds fifteen (15) calendar days. Employees are not entitled to be paid for sick leave under the provisions of this act until they have been continuously employed for ninety (90) days. Upon completion of the qualifying period, the employee is entitled to the sick leave credits he has earned.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have a regularly scheduled work assignment, and normally work at least twenty (20) hours each week of the pay period, and have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) An employee who terminates his employment with the state or of any county or city thereof, is entitled to a lump-sum payment equal to one-fourth ( $\frac{1}{4}$ ) of the pay attributed to his accumulated sick leave. The pay attributed to his accumulated sick leave shall be computed on the basis of the employee's salary or wage at the time the sick leave credits were earned. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971, and the payment therefor, shall be the responsibility of the state, or any county or city thereof, wherein the sick leave accrues. However, no employee for-

feits any sick leave rights or benefits he had accrued prior to July 1, 1971. However, where an employee transfers between agencies within the same state, county or city jurisdiction he shall not be entitled to a lump-sum payment. In such a transfer the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(6) An employee of the state or any county or city thereof who receives a lump-sum payment pursuant to this act and who is again employed by the state or a county or city thereof shall not be credited with any sick leave for which he has previously been compensated.

(7) The department of administration of the state of Montana or the administrative office of any county or city thereof shall be responsible for the proper administration of sick leave and shall promulgate such rules and regulations as it deems necessary to achieve the uniform administration of sick leave and to prevent the abuse thereof. When promulgated these rules and regulations are effective as to all employees of the state of Montana or any county or city thereof.

(8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this act.

**History:** En. 59-1008 by Sec. 1, Ch. 93, L. 1971; amd. Sec. 5, Ch. 476, L. 1973.

#### **Title of Act**

An act adding new section 59-1008, R. C. M. 1947, to provide uniform sick leave benefits for public employees.

#### **Amendments**

The 1973 amendment inserted "full-time" before "employee" at the beginning of subsection (1); substituted "is entitled to and shall earn sick leave credits" in the first sentence of subsection (1) for "shall be granted sick leave with full pay"; added "from the first full pay period of employment" to the end of the first sentence of subsection (1); inserted new second and third sentences in subsection (1); converted the sick leave allowance stated in the fourth sentence of subsection (1) from a monthly to an

annual allowance; inserted "continuous" before "leave of absence" in the first sentence of subsection (2); inserted "calendar" before "days" at the end of the first sentence of subsection (2); inserted new subsections (3) and (4); renumbered subsections (3), (4), (5) and (6) as (5), (6), (7) and (8); substituted "An employee who terminates his employment" at the beginning of subsection (5) for "Upon separation from service"; substituted "July 1, 1971" in the third sentence of subsection (5) for "when this act becomes effective"; substituted "had accrued prior to July 1, 1971" at the end of the fourth sentence of subsection (5) for "has previously accrued"; added the fifth and sixth sentences to subsection (5); inserted "the administrative office" before "of any county or city" in the first sentence of subsection (7); and made numerous minor changes in phraseology.

**59-1009. Observance of holiday falling on an employee's day off.** Any employee of the state of Montana, or any county or city thereof, who is scheduled for a day off on a day which is observed as a legal holiday, except Sundays, shall be entitled to receive a day off either on the day preceding or the day following the holiday, whichever allows a day off in addition to the employee's regularly scheduled days off.

**History:** En. Sec. 1, Ch. 108, L. 1971.

#### **Title of Act**

An act to provide for holiday observance

by public employees when a holiday falls on the employee's day off.

**59-1010. Jury duty—service as witness.** (1) Each employee of the state or any political subdivision thereof who is under proper summons as a juror shall collect all fees and allowances payable as a result of the service



and forward the fees to the appropriate accounting office. Juror fees shall be applied against the amount due the employee from his employer. However, if an employee elects to charge his juror time off against his annual leave he shall not be required to remit his juror fees to his employer. In no instance is an employee required to remit to his employer any expense or mileage allowance paid him by the court.

(2) An employee subpoenaed to serve as a witness shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Witness fees shall be applied against the amount due the employee from his employer. However, if an employee elects to charge his witness time off against his annual leave he shall not be required to remit his witness fees to his employer. In no instance is an employee required to remit to his employer any expense or mileage allowances paid him by the court.

(3) Employers may request the court to excuse their employees from jury duty if they are needed for the proper operation of a unit of state or local government.

(4) The department of administration of the state of Montana or the administrative office of any city or county thereof shall issue the necessary regulations to implement this act.

**History:** En. Sec. 6, Ch. 476, L. 1973; amd. Sec. 1, Ch. 154, L. 1974.

serve as a juror in a court or judicial proceedings without loss of cumulative benefits."

#### Amendments

The 1974 amendment substituted "political subdivision" in the first sentence of subsection (1) for "county or city"; and substituted the portion of subsection (1) following "under proper summons" for "shall be granted leave without pay to

#### Effective Date

Section 2 of Ch. 154, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

## CHAPTER 11—FEDERAL SOCIAL SECURITY ACT—COVERAGE OF CERTAIN OFFICERS AND EMPLOYEES

### Section

59-1102.1. Referendum and certification.

59-1108. Persons excepted from act.

59-1109. Supplementation of social security benefits.

59-1110. Eligibility of staff and teachers—payroll deductions.

**59-1102.1. Referendum and certification.** (a) \* \* \* [Same as parent volume.]

(b) Pursuant to section 218 (p) (1) of the Social Security Act, the highway patrolmen's retirement system of the state of Montana, and the public employees' retirement system of the state of Montana and the metropolitan police retirement system of the various cities of Montana shall, for the purposes of this act be deemed to constitute separate retirement systems with respect to the state and separate retirement systems with respect to each political subdivision having portions covered thereby. With respect to highway patrolmen of the state the governor is empowered to authorize a referendum and with respect to the employees of any political subdivision he shall authorize a referendum upon request of the governing body of such subdivision and in either case the referendum shall be conducted, and the

governor shall designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218 (d) (3) of the Social Security Act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under this act. The notice of referendum required by section 218 (d) (3) (C) of the Social Security Act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this act.

(c) Upon receiving evidence satisfactory to him that with respect to any such referendum the conditions specified in section 218 (d) (3) of the Social Security Act have been met, the governor shall so certify to the secretary of health, education, and welfare.

**History:** En. as Sec. 3, Ch. 44, L. 1953  
by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2,  
Ch. 122, L. 1974.

#### Amendments

The 1974 amendment inserted subsection (b); and redesignated former subsection (b) as subsection (c).

#### Compiler's Notes

Section 98, Ch. 326, Laws 1974, substituted "department of administration" in this section for "controller."

**59-1108. Persons excepted from act.** This act shall not apply to, and there shall be excluded from the operation thereof, all employees of the state and of the political subdivisions thereof operating under the provisions of any retirement plan for firemen.

**History:** En. Sec. 8, Ch. 44, L. 1953;  
amd. and redes. as Sec. 10, Ch. 44, L. 1953  
by Sec. 10, Ch. 270, L. 1955; amd. Sec. 3,  
Ch. 97, L. 1959; amd. Sec. 1, Ch. 122, L.  
1974.

#### Amendments

The 1974 amendment deleted "policemen or highway patrolmen" from the end of the section.

**59-1109. Supplementation of social security benefits.** Any school district of the state, may, upon the approval thereof being voted by the board of trustees, conduct and supervise a referendum pursuant to section 218 of the Federal Social Security Act, among the members of the staff and teachers of the school or schools under the jurisdiction of such board of trustees. If the majority of votes cast in any such referendum indicates that said staff and teachers approve, then such board of trustees shall certify to the state department of revenue (or such other agency as may be by legislation designated to administer such program and enter into agreements for extensions of social security coverage) that the conditions for coverage by social security, required by section 218 of the Social Security Act have been complied with.

**History:** En. Sec. 1, Ch. 271, L. 1955;  
amd. Sec. 20, Ch. 391, L. 1973.

#### Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the second sentence.

**59-1110. Eligibility of staff and teachers—payroll deductions.** Pursuant to such certification, the staff and teachers of any such district shall

be eligible for coverage under the provisions of the Federal Social Security Act, and the fiscal officer of such district shall thereafter collect the contributions required under the Federal Social Security Act, section 218, by payroll deduction from the staff and teachers and from the school district as employer; and said funds and accounts shall be deposited with the state department of revenue, or such other agency as may be designated by the legislature to administer Social Security Act coverage in this state, and held in the contributions fund as provided by sections 59-1101 to 59-1108. For the purposes of this act, the contributions with respect to services, equivalent to the employer's tax established by the Federal Social Security Act shall be the first obligation against any state funds received for school support by any school district, high school district or county high school, and shall first be paid therefrom.

**History:** En. Sec. 2, Ch. 271, L. 1955;  
amd. Sec. 1, Ch. 253, L. 1965; amd. Sec.  
21, Ch. 391, L. 1973.

#### Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the first sentence.

### 59-1111. For purposes of act, each state institution, etc.

#### Cross-References

Board of regents to exercise powers and duties, sec. 75-5617 (2).

## CHAPTER 13—FACSIMILE SIGNATURES OF PUBLIC OFFICIALS

### 59-1301. Definitions.

**Facsimile Signatures of Public Officials Act**

**NOTE.**—Uniform State Law. In addition to the states listed in the parent volume, the following states have adopted

the "Uniform Facsimile Signatures of Public Officials Act": Colorado, Florida, Kansas, North Dakota, Rhode Island and Washington.

## CHAPTER 14—MONTANA SALARY COMMISSION

#### Section

- 59-1401. Creation of commission—composition—terms—vacancies.
- 59-1402. Meetings of commission—quorum—compensation.
- 59-1403. Commission studies.
- 59-1404. Commission meetings and recommendations—submission.

### 59-1401. Creation of commission—composition—terms—vacancies. (1)

There is created a Montana salary commission. The commission is composed of eight (8) members, none of whom may be public officers, either elected or appointed. The commission shall be appointed in the following manner and in the following chronological order:

(a) First, the governor shall appoint one (1) member from each of the two (2) major political parties, equally divided between the United States congressional districts;

(b) Next, the supreme court shall appoint one (1) member from each of the two (2) major political parties, equally divided between the United States congressional districts;

(c) Next, the majority floor leader of the senate shall appoint one (1) member from his political party. The minority leader of the senate shall



then appoint one (1) member from his political party not from the same United States congressional district as the member appointed by the presiding officer;

(d) Next, the presiding speaker of the house of representatives shall appoint one (1) member from his political party. Lastly, the minority leader in the house of representatives shall appoint one (1) member from his political party not from the same United States congressional district as the member appointed by the speaker.

All appointments shall be made not later than the 60th legislative day.

(2) Commission members shall serve a term of four (4) years. In the event a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor.

**History:** En. Sec. 1, Ch. 66, L. 1973; amd. Sec. 1, Ch. 41, L. 1974.

#### **Title of Act**

An act to create the Montana salary commission, to comply with article XIII, section 3 of the 1972 Montana constitution and providing an effective date.

#### **Amendments**

The 1974 amendment deleted from sub-

division (2), after the first sentence, a proviso reading "provided that one-half ( $\frac{1}{2}$ ) of the membership of the first salary commission shall serve a term of two (2) years, and the committee members shall draw lots at their first meeting to determine which of their number will serve two (2) year terms"; and made a minor change in punctuation.

**59-1402. Meetings of commission—quorum—compensation.** (1) The commission shall hold at least two (2) meetings before submitting a report to the legislative assembly as provided in section 59-1404.

(2) All meetings shall be called by the chairman of the commission, and notice of the meeting dates shall be given by mail to each commission member at least twenty (20) days before the day scheduled for the meeting.

(3) A majority of members present at any meeting is sufficient to transact any business to come before the meeting; however, a majority of all commission members is necessary to ratify the commission's recommendations to the legislature.

(4) Commission members shall be reimbursed from the appropriation to the office of the legislative council for their actual and necessary expenses incurred, and twenty-five dollars (\$25) per day while attending meetings of the commission.

(5) The commission shall choose one (1) of its members as chairman at its initial meeting, and the executive director of the legislative council or his delegate shall serve as secretary to the commission and shall record and transcribe all minutes of commission meetings and prepare all correspondence, notices, and formal recommendations as directed by the chairman.

**History:** En. Sec. 2, Ch. 66, L. 1973; amd. Sec. 2, Ch. 41, L. 1974.

#### **Amendments**

The 1974 amendment deleted the former subdivision (1) reading "The initial meeting of the commission shall be held on the second Tuesday of July in the year in which the commission is created"; renumbered the subdivisions accordingly; sub-

stituted "submitting a report to the legislative assembly as provided in section 59-1404" at the end of the present subdivision (1) for "any legislative session which may consider appropriations for compensation including salaries and expenses of the judiciary and elective members of the legislative and executive branches"; and deleted "subsequent" before "meetings" at the beginning of subdivision (2).

**59-1403. Commission studies.** The commission may request comprehensive reports or studies from any state agency concerning compensation of the judiciary and elective members of the legislative and executive branches of government. Any state agency from which such a report is requested shall furnish the same within a reasonable time as determined by the chairman and the head of the agency concerned. The report or study requested, in addition to such other matters as the commission may request, or the agency preparing the report may determine appropriate, shall contain a review and comparison of the levels and form of compensation paid to the judiciary and elective members of the legislative and executive branches with the levels and forms of compensation paid in other states similarly situated.

**History:** En. Sec. 3, Ch. 66, L. 1973.

**59-1404. Commission meetings and recommendations—submission.** The commission shall hold its meetings in the year prior to each first regular session of the biennium. On or before November 15 prior to each first regular session of the biennium, the commission shall submit its formal written recommendations for the level and form of compensation to be paid to the judiciary and the elective members of the legislative and executive branches to each member of the legislative assembly, to each member of the judiciary, and each elective member of the executive branch, for review and consideration. A commission member who does not concur in the proposed recommendation may submit his written objections thereto with the formal recommendations submitted by the commission.

**History:** En. Sec. 4, Ch. 66, L. 1973;  
amd. Sec. 3, Ch. 41, L. 1974.

compensation of members of the judiciary and elective members of the legislative and executive branches."

#### **Amendments**

The 1974 amendment inserted the first sentence; and substituted "each first regular session of the biennium" in the second sentence for "the year in which the legislature may consider appropriations for

#### **Effective Date**

Section 5 of Ch. 66, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved February 25, 1973.

## **CHAPTER 15—STATE EMPLOYEE GROUP INSURANCE**

### **Section**

59-1501. Definitions.

59-1502. Negotiation and contracting by department of administration.

59-1503. Advisory council—selection of representatives—meetings.

59-1504. Combining existing employee groups.

59-1505. Approval of insurance by component group—independent negotiation in event of disapproval.

59-1506. Rules.

59-1507. Costs of administration and negotiation.

**59-1501. Definitions.** As used in this act:

(1) "Department" means the department of administration of the state of Montana provided for in chapter 2 of Title 82A.

(2) "Employee" means an employee of the state of Montana eligible for insurance coverage pursuant to section 11-1024 and a member, officer, or employee of the legislative branch of state government. The term

“employee” does not include employees of counties, cities, towns and school districts of the state of Montana.

History: En. Sec. 1, Ch. 438, L. 1973.

**Title of Act**

An act to provide for combining all

state employees into one or more groups for purposes of negotiating and contracting for group insurance.

**59-1502. Negotiation and contracting by department of administration.**

The department of administration shall negotiate and contract for all contracts of group insurance and health service corporation plans issued to all officers and employees of all departments of the executive and legislative branches of the government of the state of Montana.

History: En. Sec. 2, Ch. 438, L. 1973.

**59-1503. Advisory council—selection of representatives—meetings. (1)**

Before the department begins negotiations for a group insurance policy, the director of the department shall create an advisory council to advise him on matters pertaining to the negotiating and contracting. The advisory council shall be created under section 82A-110, but the members shall be selected in accordance with subsection (2) of this section.

(2) The officers and employees of each principal department and constitutional office in the executive branch of state government and the members, officers, and employees of the legislative branch of state government shall select, in accordance with the rules adopted under section 6 [59-1506] of this act, a representative to serve on the advisory council and to represent the interests of the officers and employees.

(3) The advisory council shall meet quarterly to review the existing policy, to report and review claim problems and provide advice to the department for future negotiations.

History: En. Sec. 3, Ch. 438, L. 1973.

**59-1504. Combining existing employee groups.** The department may combine existing employee groups in one or more departments of the executive branch of the government of the state of Montana into a single group and contract on behalf of the combined group. The department may also combine all employees of the executive and legislative branches of the government of the state of Montana into one group.

History: En. Sec. 4, Ch. 438, L. 1973.

**59-1505. Approval of insurance by component group—-independent negotiation in event of disapproval.** Two-thirds (2/3) of the members of any existing component employee group, which is part of the combined group on whose behalf the department has contracted for group insurance, must approve the policy in order for it to be effective as to that component group. When the policy is approved, the employer contribution provided for in section 11-1024 shall then be paid to the insurer issuing the approved policy. The component employee group shall retain the power to negotiate and contract for group insurance and health service corporation plans if such component group does not approve the policy negotiated by the department.

History: En. Sec. 5, Ch. 438, L. 1973.



**59-1506. Rules.** The department is empowered to promulgate such rules as are required to carry out the purposes of this act.

**History:** En. Sec. 6, Ch. 438, L. 1973.

**59-1507. Costs of administration and negotiation.** The department's cost of negotiating and administering group insurance policies pursuant to this act are to be included as part of the premium paid and returned to the department by each insurer from the premiums it receives. All department costs of negotiating and administering group insurance policies are subject to the approval of the advisory council.

**History:** En. Sec. 7, Ch. 438, L. 1973.

## CHAPTER 16—COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES

### Section

- 59-1601. Policy.
- 59-1602. Definitions.
- 59-1603. Employees' right to join or form labor organization and engage in collective bargaining activities.
- 59-1604. Duty to bargain collectively—good faith.
- 59-1605. Unfair labor practices of employer or labor organization.
- 59-1606. Petition on representation matters—hearing—notice—election.
- 59-1607. Remedies for unfair labor practice—hearing—procedure.
- 59-1608. Petition for enforcement of board order—jurisdiction of district court—procedure—finding by board—review.
- 59-1608.1. Declaration of policy.
- 59-1608.2. Professional instructors and teachers defined as public employees.
- 59-1609. Representative of public employer.
- 59-1610. Execution of agreement—arbitration procedure—effect of agreement.
- 59-1611. Counsel for public parties to litigation.
- 59-1612. Dues deducted from employee's pay.
- 59-1613. Subpoena powers of board—oaths—refusal to obey—rules.
- 59-1614. Mediation of disputes—fact-finding proceedings—arbitration.
- 59-1615. Existing collective bargaining agreements not affected.
- 59-1616. Administrative Procedure Act applied.

**59-1601. Policy.** In order to promote public business by removing certain recognized sources of strife and unrest, it is the policy of the state of Montana to encourage the practice and procedure of collective bargaining to arrive at friendly adjustment of all disputes between public employers and their employees.

**History:** En. Sec. 1, Ch. 441, L. 1973.

### Title of Act

An act granting public employers and public employees the right to bargain collectively; providing that the board of personnel appeals may designate labor

organizations to be exclusive representative of employees in certain units; and may also call elections by employees for the same purpose; providing the board of personnel appeals shall establish remedies for unfair labor practices; and providing procedures for carrying out the act.

**59-1602. Definitions.** When used in this act:

(1) "public employer" means the state of Montana or any political subdivision thereof, including but not limited to, any town, city, county, district, school board, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and any representative or agent designated by the public employer to act in its interest in dealing with public employees;

(2) "public employee" means a person employed by a public employer in any capacity, except elected officials, persons directly appointed by the governor, supervisory employees and management officials (as defined in subsection (3) and (4) below) or members or any state board or commission who serve the state intermittently, professional instructors, teachers, school district clerks and school administrators, and paraprofessional instructors employed by school boards and districts of this state, registered professional nurses performing service for health care facilities, professional engineers and engineers in training, and includes any individual whose work has ceased as a consequence of, or in connection with, any unfair labor practice or concerted employee action;

(3) "supervisory employee" means any individual having authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

(4) "management officials" means representatives of management having authority to act for the agency on any matters relating to the implementation of agency policy;

(5) "labor organization" means any organization or association of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment;

(6) "exclusive representative" means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer;

(7) "board" means the board of personnel appeals provided for in section 82A-1014;

(8) "person" includes one or more individuals, labor organizations, public employees, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers;

(9) "unfair labor practice" means any unfair labor practice listed in section 5 [59-1605];

(10) "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand the proximate relation of employer and employee;

(11) "appropriate unit" means a group of public employees banded together for collective bargaining purposes as designated by the board.

History: En. Sec. 2, Ch. 441, L. 1973.

59-1603. Employees' right to join or form labor organization and engage in collective bargaining activities. (1) Public employees shall have,

and shall be protected in the exercise of, the right of self-organization, to form, join or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours, fringe benefits, and other conditions of employment and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint or coercion.

(2) Public employees and their representatives shall recognize the prerogatives of public employers to operate and manage their affairs in such areas as but not limited to:

- (a) direct employees;
- (b) hire, promote, transfer, assign, and retain employees;
- (c) relieve employees from duties because of lack of work or funds or under conditions where continuation of such work be inefficient and nonproductive;
- (d) maintain the efficiency of government operations;
- (e) determine the methods, means, job classifications, and personnel by which government operations are to be conducted;
- (f) take whatever actions may be necessary to carry out the missions of the agency in situations of emergency;
- (g) establish the methods and processes by which work is performed.

(3) Labor organizations designated in accordance with the provisions of this act are responsible for representing the interest of all employees in the exclusive bargaining unit without discrimination for the purposes of collective bargaining with respect to rates of pay, hours, fringe benefits, and other conditions of employment.

(4) Certification as an exclusive representative shall be extended or continued as the case may be only to a labor or employee organization the written bylaws of which provide for and guarantee the following rights and safeguards and whose practices conform to such rights and safeguards as: provisions are made for democratic organization and procedures; elections are conducted pursuant to adequate standards and safeguards; controls are provided for the regulation of officers and agents having fiduciary responsibility to the organization; and requirements exist for maintenance of sound accounting and fiscal controls including annual audits.

(5) No public employee who is a member of a bona fide religious sect, or division thereof, the established and traditional tenets or teachings of which oppose a requirement that a member of such sect or division join or financially support any labor organization, may be required to join or financially support any labor organization as a condition of employment, if such public employee pays, in lieu of periodic union dues, initiation fees, and assessments, at the same time or times such periodic union dues, initiation fees, and assessments would otherwise be payable, a sum of money equivalent to such periodic union dues, initiation fees, and assessments, to a nonreligious, nonunion charity designated by the labor organization. Such public employee shall furnish to such labor organization written receipts evidencing such payments and failure to make such payments or furnish such receipts shall subject the employee to the same



sanctions as would nonpayment of dues, initiation fees or assessments under the applicable collective bargaining agreement.

A public employee desiring to avail himself or herself to the right of nonassociation with a labor organization as provided in this subsection shall make written application to the chairman of the board of personnel appeals. Within ten days of the date of receipt of such application, the chairman shall appoint a committee of three (3) consisting of a clergyman not connected with the sect in question, a labor union official not directly connected with the labor organization in question and a member of the public at large, who shall be the chairman. The committee shall, within ten (10) days of the date of its appointment, meet at the locale of either the employee's residence or place of employment and, after receiving written or oral presentations from all interested parties, determine by a majority vote whether or not such public employee qualifies for the right of nonassociation with such labor organization. The committee's decision shall be made in writing within three (3) days of the meeting date and a copy thereof shall be forthwith mailed to such public employee, labor organization and the chairman of the board of personnel appeals.

History: En. Sec. 3, Ch. 441, L. 1973; Amendments  
amd. Sec. 1, Ch. 244, L. 1974.

The 1974 amendment added subsection (5).

**59-1604. Duty to bargain collectively—good faith.** The public employer and the exclusive representative, through appropriate officials or their representatives, shall have the authority and the duty to bargain collectively. This duty extends to the obligation to bargain collectively in good faith as set forth in subsection (3) of section 5 [59-1605] of this act.

History: En. Sec. 4, Ch. 441, L. 1973.

**59-1605. Unfair labor practices of employer or labor organization.** (1)  
It is an unfair labor practice for a public employer to:

(a) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 3 [59-1603] of this act;

(b) dominate, interfere, or assist in the formation or administration of any labor organization; however, subject to rules adopted by the board under section 12 (3), an employer is not prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(c) discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; however, nothing in this act or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require that an employee who is not or does not become a union member shall be required as a condition of employment to have an amount equal to the union initiation fee and monthly dues deducted from his wages in the same manner as checkoff of union dues;

(d) discharge or otherwise discriminate against an employee because

he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this act;

(e) refuse to bargain collectively in good faith with an exclusive representative.

(2) It is an unfair labor practice for a labor organization or its agents to:

(a) restrain or coerce employees in the exercise of the right guaranteed in subsection (1) of section 3 [59-1603] of this act, or a public employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances;

(b) refuse to bargain collectively in good faith with a public employer, if it has been designated as the exclusive representative of employees;

(c) use agency shop fees for contributions to political candidates or parties at state or local levels.

(3) For the purpose of this act, to bargain collectively is the performance of the mutual obligation of the public employer, or his designated representatives, and the representatives of the exclusive representative to meet at reasonable times and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

(4) This act does not limit the authority of the legislature, any political subdivision or the governing body, relative to appropriations for salary and wages, hours, fringe benefits, and other conditions of employment.

**History: En. Sec. 5, Ch. 441, L. 1973.**

#### **59-1606. Petition on representation matters—hearing—notice—election.**

(1) Whenever in accordance with such rules as may be prescribed by the board, a petition has been filed:

(a) by an employee or group of employees or any labor organization acting in their behalf alleging that thirty per cent (30%) of the employees:

(i) wish to be represented for collective bargaining by a labor organization as exclusive representative, or

(ii) assert that the labor organization which has been certified or is currently being recognized by the public employer as bargaining representative is no longer the representative of the majority of employees in the unit; or

(b) by the public employer alleging that one or more labor organizations has presented to it a claim to be recognized as the exclusive representative in an appropriate unit, the board or an agent of the board shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice. If the board or an agent of the board finds that there is a question of representation, it shall direct an election by secret ballot to

determine whether, and by which labor organization the employees desire to be represented or whether they desire to have no labor organization represent them and shall certify the results thereof. Only those labor organizations which have been designated by more than ten per cent (10%) of the employees in the unit found to be appropriate shall be placed on the ballot. Nothing in this section prohibits the waiving of hearings by stipulation for the purpose of a consent election in conformity with the rules of the board.

(2) In order to assure employees the fullest freedom in exercising the rights guaranteed by this act, the board or an agent of the board shall decide the unit appropriate for the purpose of collective bargaining, and shall consider such factors as community of interest, wages, hours, fringe benefits, and other working conditions of the employees involved, the history of collective bargaining, common supervision, common personnel policies, extent of integration of work functions and interchange among employees affected, and the desires of the employees.

(3) An election shall not be directed in any bargaining unit or in any subdivision thereof within which, in the preceding twelve (12) month period, a valid election has been held. The board or an agent of the board shall determine who is eligible to vote in the election and shall establish rules governing the election. Unless the majority vote is for no representation by a labor organization and in any election where none of the choices for a representative on the ballot receives a majority, a runoff election shall be conducted; the ballot providing for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election. A labor organization which receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative.

**History: En. Sec. 6, Ch. 441, L. 1973.**

**59-1607. Remedies for unfair labor practice—hearing—procedure.** Violations of the provisions of section 5 [59-1605] of this act are unfair labor practices remediable by the board in the following manner:

(1) Whenever a complaint is filed alleging that any person has engaged in or is engaging in any such unfair labor practice, the board, or any agent designated by the board for such purposes, shall issue and cause to be served upon the person a copy of the complaint and a notice of hearing before the board, a member thereof, or before a designated agent, at a time and place therein fixed, not less than five (5) working days after the date of service. Any complaint may be amended by the complainant at any time prior to the issuance of an order based thereon, provided that the charged party is not unfairly prejudiced thereby. The person upon whom the charge is served shall file an answer to the complaint. The complainant and the person charged shall be parties and shall appear in person or otherwise give testimony at the place and time fixed in the notice of hearing. In the discretion of the board or its agent conducting the hearing, any other person may be allowed to intervene in the proceeding and present testimony. In any hearing the board is not bound by the rules of evidence prevailing in the courts,



(2) The testimony taken by the board or its agent shall be reduced to writing and filed with the board. Thereafter in its discretion the board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the board is of the opinion that any person named in the complaint has engaged in or is engaging in an unfair labor practice, it shall state its findings of fact and shall issue and cause to be served on the person an order requiring him to cease and desist from the unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this act. The order may further require the person to make reports from time to time showing the extent to which he has complied with the order. If upon the preponderance of the testimony taken the board is not of the opinion that the person named in the complaint has engaged in or is engaging in the unfair labor practice, then the board shall state its findings of fact and shall issue an order dismissing the complaint. No notice of hearing shall be issued based upon any unfair labor practice more than six (6) months before the filing of the charge with the board, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the six (6) month period shall be computed from the day of his discharge. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if it is found that the individual was suspended or discharged for cause. If the evidence is presented before a member of the board, or before an examiner, the member, or the examiner as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed decision, together with a recommended order, which shall be filed with the board, and if no exceptions are filed within twenty (20) days after service thereof upon the parties, or within such further period as the board may authorize, the recommended order shall become the order of the board.

(3) Until the record in a proceeding has been filed in district court, the board at any time, upon reasonable notice and in such manner as it considers proper, may modify or set aside, in whole or in part, any finding or order made or issued by it.

**History: En. Sec. 7, Ch. 441, L. 1973.**

**59-1608. Petition for enforcement of board order—jurisdiction of district court—procedure—finding by board—review.** (1) The board or the complaining party may petition for the enforcement of the order of the board and for appropriate temporary relief or a restraining order, and shall file in the district court, at its own expense, the record in the proceedings. Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing and shall order the party charged to be served with notice of hearing at least twenty (20) days before the date set for hearing. After the hearing the district court shall issue its order granting such temporary or permanent relief or restraining order as it considers just and proper, enforcing as so modified, or setting aside in whole or in part the order of the board. No objection that has not been raised before

the board shall be considered by the court, unless the failure or neglect to raise the objection is excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If either party applies to the court for leave to present additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to present it in the hearing before the board, the court may order the additional evidence to be taken before the board and to be made part of the record. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file the modifying or new findings with the district court. Any order of the district court shall be subject to review by the supreme court in accordance with rules of civil procedure.

(2) The commencement of proceedings under subsection (1) of this section shall not, unless specifically ordered by the court, operate as a stay of the board's order.

History: En. Sec. 8, Ch. 441, L. 1973.

**59-1608.1. Declaration of policy.** Since joint decision making is the long accepted manner of governing institutions of higher learning, the legislature declares that it is public policy to encourage that process by authorizing collective bargaining as one part of the decision-making process for the institutions between the professional educational employees and the bargaining units of the university system and community colleges. The legislature recognizes that professional employees possess knowledge, expertise, and dedication which is helpful and necessary to the operation and quality of the institutions and of assistance to the administration in developing policies.

History: En. 59-1608.1 by Sec. 1, Ch. 313, L. 1974.

**Title of Act**

An act to amend sections 59-1609 and

59-1610, R. C. M. 1947 recognizing collective bargaining rights in the professional educational employees of the university system and community colleges.

**59-1608.2. Professional instructors and teachers defined as public employees.** Under this act collective bargaining shall be carried out in accordance with the provisions of Title 59, chapter 16, R. C. M. 1947, provided however, the provisions in section 59-1602 (2) excepting professional instructors and teachers from the definition of public employee do not apply for the purposes of this act.

History: En. 59-1608.2 by Sec. 2, Ch. 313, L. 1974.

**59-1609. Representative of public employer.** The chief executive officer of the state or political subdivision or chairman of the county commissioners, or commissioner of higher education, whether elected or appointed, or his designated authorized representative shall represent the public employer in collective bargaining with an exclusive representative.

History: En. Sec. 9, Ch. 441, L. 1973; amd. Sec. 3, Ch. 313, L. 1974.

**Amendments**

The 1974 amendment inserted "or commissioner of higher education."

**59-1610. Execution of agreement—arbitration procedure—effect of agreement.** (1) and (2) \* \* \* [Same as 1973 Supplement.]

(3) An agreement between the public employer and a labor organization shall be valid and enforced under its terms when entered into in accordance with the provisions of this act and signed by the chief executive officer of the state or political subdivision or commissioner of higher education, or his representative. A publication of the agreement is not required to make it effective. The procedure for the making of an agreement between the state or political subdivision and a labor organization provided by this act is the exclusive method of making a valid agreement for public employees represented by a labor organization.

**History:** En. Sec. 10, Ch. 441, L. 1973;  
amd. Sec. 4, Ch. 313, L. 1974.

**Amendments**

The 1974 amendment inserted "or commissioner of higher education" near the end of the first sentence of subsection (3).

**59-1611. Counsel for public parties to litigation.** In any action brought under the provisions of this act in the courts of this state the public employer shall be represented by the attorney general or attorney of subdivision, and the board shall be represented by counsel hired to represent the board for purposes of that proceeding.

**History:** En. Sec. 11, Ch. 441, L. 1973.

**59-1612. Dues deducted from employee's pay.** Upon written authorization of any public employee within a bargaining unit, the public employer shall deduct from the pay of the public employee the monthly amount of dues as certified by the secretary of the exclusive representative and shall deliver the dues to the treasurer of the exclusive representative.

**History:** En. Sec. 12, Ch. 441, L. 1973.

**59-1613. Subpoena powers of board—oaths—refusal to obey—rules.** (1) To accomplish the objectives and to carry out the duties prescribed by this act, the board may subpoena witnesses and may administer oaths and affirmations.

(2) In cases of neglect or refusal to obey a subpoena issued to any person, the district court of the county in which the investigations or the public hearings are taking place, or the district court of the first judicial district of this state, upon application by the board, may issue an order requiring such person to appear before the board or agent to produce evidence or give testimony about the matter under investigation. Failure to obey such order may be punished by the court as contempt.

(3) Any subpoena, notice of hearing or other process or notice of the board issued under the provisions of this act shall be served as provided by the rules of civil procedure.

(4) The board shall adopt, amend, or rescind such rules it considers necessary and administratively feasible to carry out the provisions of this act.

**History:** En. Sec. 13, Ch. 441, L. 1973.

**59-1614. Mediation of disputes—fact-finding proceedings—arbitration.** (1) If after a reasonable period of negotiation over the terms of an



agreement, or upon expiration of an existing collective bargaining agreement, a dispute concerning the collective bargaining agreement exists between the public employer and a labor organization, the parties shall request mediation.

(2) If upon expiration of an existing collective bargaining agreement, or thirty (30) days following certification or recognition of an exclusive representative, a dispute concerning the collective bargaining agreement exists between the employer and the exclusive representative, either party may petition the board to initiate fact-finding.

(3) Within three (3) days of receipt of such petition the board shall submit to the parties a list of seven (7) qualified, disinterested persons from which list the parties shall alternate in striking three (3) names, and the remaining person shall be designated fact finder. This process shall be completed within five (5) days of receipt of the list. The parties shall notify the board of the designated fact finder.

(4) If no request for fact-finding is made by either party before the expiration of the agreement, or thirty (30) days following certification or recognition of an exclusive representative, the board may initiate fact-finding as provided for in (3) above.

(5) The fact finder shall immediately establish dates and place of hearings. Upon request of either party of the fact finder, the board shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths. Upon completion of the hearings, but no later than twenty (20) days from the day of appointment, the fact finder shall make written findings of facts and recommendations for resolution of the dispute and shall serve such findings on the public employer and the exclusive representative. The fact finder may make this report public five (5) days after it is submitted to the parties. If the dispute is not resolved fifteen (15) days after the report is submitted to the parties, the report shall be made public.

(6) The public employer and the exclusive representative shall be the only proper parties to fact-finding proceedings.

(7) The cost of fact-finding proceedings shall be equally borne by the board and the parties concerned.

(8) Nothing in this section prohibits the fact finder from endeavoring to mediate the dispute in which he has been selected or appointed as fact finder.

(9) Nothing in this section prohibits the parties from voluntarily agreeing to submit any or all of the issues to final and binding arbitration, and if such agreement is reached the arbitration shall supersede the fact-finding procedures set forth in this section. An agreement to arbitrate, and the award issued in accordance with such agreement shall be enforceable in the same manner as is provided in this act for enforcement of collective bargaining agreements.

History: En. Sec. 14, Ch. 441, L. 1973.

#### Separability Clause

Section 15 of Ch. 441, Laws 1973 read  
"If any provision of this act or the application of such provision to any person

or circumstance is held invalid, the remainder of this act or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby."

**59-1615. Existing collective bargaining agreements not affected.** Nothing in this act shall be construed to remove recognition of established collective bargaining agreements already recognized or in existence prior to the effective date of this act.

**History: En. Sec. 16, Ch. 441, L. 1973.**

**59-1616. Administrative Procedure Act applied.** All hearings and appeals shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act [82-4201 to 82-4225].

**History: En. Sec. 17, Ch. 441, L. 1973.**





## TITLE 60—OIL AND GAS

### Chapter

1. Conservation of oil and gas, 60-126 to 60-136, 60-140 to 60-145, 60-148, 60-149.
3. State manufacture and sale of petroleum products declared public purpose, Repealed—Section 103, Chapter 326, Laws of 1974.
8. Underground gas storage reservoirs, 60-801 to 60-805.
9. Abandoned oil and gas wells, 60-901.

### CHAPTER 1—CONSERVATION OF OIL AND GAS

#### Section

- 60-124. [Transferred.]
- 60-126. Definitions.
- 60-127. Powers and duties of board.
- 60-127.1. Waste of oil and gas prohibited.
- 60-128. Notice of intention to drill.
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- 60-131. Agreements for development and operation of pool—not in violation of state antitrust laws when approved by board.
- 60-131.1. Operation of pool as unit—board to hold hearing—notice.
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- 60-131.3. Terms and conditions of order—requirements.
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- 60-131.5. Amendment of board order—conditions.
- 60-131.6. Units established by previous order may be included—manner of inclusion.
- 60-131.8. Presumptions—compliance with board order constitutes fulfillment of lease or contract obligations.
- 60-131.9. Property rights—operator's lien—perfection of lien.
- 60-131.10. Contract relating to tract not terminated by board order.
- 60-131.11. Title to oil and gas rights not affected by board order—allocation of property.
- 60-131.12. Trade not restrained by unit operations.
- 60-132. Administrative Procedure Act—orders—notice.
- 60-133. Subpoena power of board—chapter does not abrogate civil actions—enforcement of chapter when board fails to enjoin violations.
- 60-134. Rehearing.
- 60-135. Court review of order of board by suit for injunction—trial de novo—temporary restraining order, when allowed, bond—appeals.
- 60-136. Enjoining violations of chapter.
- 60-140. Lands subject to act.
- 60-141. Co-operation with other governmental units and agencies.
- 60-142. Penalties.
- 60-143. Chapter does not constitute oil or gas wells as public utilities.
- 60-144. Owners shall make available to board cores and cuttings.
- 60-145. Privilege and license tax—quarterly statements—penalties—drilling permit fees—oil and gas conservation moneys.
- 60-148. Availability of facilities to bureau.
- 60-149. Department to inventory abandoned wells and seismic operations; reclamation procedures.

#### 60-124. [Transferred.]

##### Compiler's Notes

Section 54, Ch. 253, Laws of 1974 re-numbered this section as sec. 60-127.1.

**60-125. Repealed.****Repeal**

Section 60-125 (Sec. 2, Ch. 238, L. 1953; Sec. 1, Ch. 11, L. 1955; Sec. 1, Ch. 196, L. 1969; Sec. 24, Ch. 100, L. 1973), relat-

ing to creation and membership of the oil and gas conservation commission, was repealed by Sec. 208, Ch. 253, Laws of 1974.

**60-126. Definitions.** As used in this chapter, unless the context requires otherwise:

(1) "Waste" means: (1) physical waste, as that term is generally understood in the oil and gas industry; (2) the inefficient, excessive, or improper use of, or the unnecessary dissipation of reservoir energy; (3) the location, spacing, drilling, equipping, operating or producing of any oil or gas well or wells in a manner which causes, or tends to cause, reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and, (4) the inefficient storing of oil or gas. The production of oil or gas from any pool or by any well to the full extent that the well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the board, is not waste within the meaning of this definition.

(2) "Board" means the board of oil and gas conservation provided for in section 82A-1508.

(3) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any agency or instrumentality of the state or any governmental subdivision thereof.

(4) "Oil" means crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form by ordinary production methods, and which are not the result of condensation of gas before or after it leaves the reservoir.

(5) "Gas" means all natural gases and all other fluid hydrocarbons as produced at the wellhead and not defined as oil in subsection (4) of this section.

(6) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool, as that term is used in this chapter.

(7) "Field" means the general area underlaid by one (1) or more pools.

(8) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces therefrom either for himself or others or for himself and others, and the term includes all persons holding such authority by or through him.

Nothing herein contained shall be construed to conflict with subsection (4) of section 81-1702, granting the state board of land commissioners the authority to enter into pooling and unitization agreements for the production of oil or gas with others.

(9) "Producer" means the owner of a well or wells capable of producing oil or gas or both.

(10) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

History: En. Sec. 3, Ch. 238, L. 1953; amd. Sec. 55, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment substituted "board" at the end of subdivision (1) and the beginning of subdivision (2) for "commission"; substituted "board of oil and gas conservation provided for in section 82A-1508" in subdivision (2) for "oil and gas conservation commission of Montana"; deleted "department" in subdivision (3) after "includes any"; deleted "the masculine gender, in referring to a person, includes

the feminine and the neuter genders" at the end of subdivision (3); added "in subsection (4) of this section" to the end of subdivision (5); substituted "chapter" at the end of subdivision (6) for "act"; deleted a former last definition reading "The word 'and' includes the word 'or' and the use of the word 'or' includes the word 'and.' The use of the plural includes the singular and the use of the singular includes the plural"; added subdivision (10); and made minor changes in style, punctuation and phraseology.

### 60-127. Powers and duties of board.

(1) The board shall make such investigations as it considers proper to determine whether waste exists or is imminent or whether other facts exist which justify any action by the board under the authority granted by this chapter with respect thereto.

(2) Subject to the administrative control of the department under section 82A-108, the board shall:

(a) Require: (i) identification of ownership of oil or gas wells, producing properties and tanks; (ii) the making and filing of acceptable well logs, reports on well locations, and the filing of directional surveys, if made, however, logs of exploratory or wildcat wells need not be filed for a period of six (6) months following completion of those wells; (iii) the drilling, casing, producing and plugging of wells in such manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas stratum, blowouts, cavings, seepages, and fires, and the pollution of fresh water supplies by oil, gas, salt, or brackish water; (iv) the restoration of surface lands to their previous grade and productive capability after a well is plugged or a seismographic shot hole has been utilized, and necessary measures to prevent adverse hydrological effects from such well or hole, unless the surface owner agrees in writing, with the approval of the board or its representatives, to a different plan of restoration; (v) the furnishing of a reasonable bond with good and sufficient surety, conditioned for performance of the duty to properly plug each dry or abandoned well; (vi) proper gauging or other measuring of oil and gas produced and saved to determine the quantity and quality thereof; and (vii) that every person who produces, transports or stores oil or gas in this state shall make available within this state for a period of five (5) years complete and accurate records of the quantities thereof, which records shall be available for examination by the board or its employees at all reasonable times, and that that person file with the board such reports as it may prescribe with respect to quantities, transportations, and storages of the oil or gas.



(b) For the purpose of preventing waste, (i) regulate the drilling, producing and plugging of wells, the shooting and chemical treatment of wells, the spacing of wells, operations voluntarily entered into to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations, and, (ii) fix, upon application made by any interested person after hearing, efficient gas-oil and water-oil ratios for any particular well or wells.

(c) Regulate the disposal of salt water and oil field wastes.

(d) Classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter.

(e) Adopt and enforce rules and orders to effectuate the purposes and the intent of this chapter. The board shall promulgate rules to implement part (a)(iv) of this subsection (2), no later than November 1, 1974.

(3) The board shall determine and prescribe what producing wells shall be defined as "stripper wells" and what wells shall be defined as "wildcat wells" and make such orders as in its judgment are required to protect those wells, and provide that stripper wells may be produced to capacity if it is considered necessary in the interest of conservation to do so.

(4) With respect to any pool from which gas was being produced by a gas well on or prior to April 1, 1953, this chapter does not authorize the board to limit or restrain the rate (daily or otherwise) of production of gas from that pool by any well then or thereafter drilled and producing from that pool to less than the rate at which the well can be produced without adversely affecting the quantity of gas ultimately recoverable by the well.

**History:** En. Sec. 4, Ch. 238, L. 1953; amd. Sec. 16, Ch. 93, L. 1969; amd. Sec. 56, Ch. 253, L. 1974; amd. Sec. 1, Ch. 260, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 260, and once by Ch. 253. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 260, Laws of 1974, substituted "board" throughout the section for "commission"; inserted subdivision (2)(a)(iv); added the second sentence to subdivision

(2)(e); and made minor changes in style.

Chapter 253, Laws of 1974, provided the present subsection and subdivision designations; deleted a former first subsection reading "The commission has jurisdiction to exercise effectively the authority granted it by this act"; substituted "board" for "commission" throughout the section; substituted "chapter" for "act" throughout the section; substituted the present preliminary clause of subsection (2) for one reading "The commission has authority, and it is its duty"; deleted from the end of subsection (2) a subdivision reading "To report as provided in section 82-4002"; substituted "April 1, 1953" in subsection (4) for "the date on which this act takes effect"; and made numerous minor changes in punctuation and phraseology.

**60-127.1. Waste of oil and gas prohibited.** Waste of oil and gas or either of them as waste is defined in this chapter, is prohibited.

**History:** En. Sec. 1, Ch. 238, L. 1953; Sec. 60-124, R. C. M. 1947; amd. and redes. 60-127.1 by Sec. 54, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment renumbered this section; and substituted "chapter" for "act."

**60-128. Notice of intention to drill.** It is unlawful to commence the drilling of a well for oil or gas without first filing with the board written notice of intention to drill, and obtaining a drilling permit as provided in section 60-145(4). It is unlawful to conduct seismic explorations with explosives without first giving the board a copy of the notice of intention to explore, filed with the county under section 69-3303.

**History:** En. Sec. 5, Ch. 238, L. 1953; amd. Sec. 57, Ch. 253, L. 1974; amd. Sec. 2, Ch. 260, L. 1974.

a composite section embodying the changes made by both amendments.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 260, and once by Ch. 253. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made

#### Amendments

Chapter 260, Laws of 1974, substituted "board" in the first sentence for "commission"; and added the second sentence.

Chapter 253, Laws of 1974, substituted "provided in section 60-145(4)" in the first sentence for "in this act hereafter provided"; substituted "board" for "commission" in the first sentence; and made minor changes in phraseology.

**60-129. Well spacing units—orders.** (1) To prevent or to assist in preventing waste of oil or gas prohibited by this chapter, the board, upon its own motion or upon application of an interested person, after hearing, may by order establish well spacing units for a pool, as to oil wells or as to gas wells or both, except in those pools which, prior to April 1, 1953, have been developed to such an extent that it would be impracticable or unreasonable to establish spacing units at the existing stage of development. Spacing units when established shall in so far as possible be of uniform size and shape for the entire pool.

(2) The size and the shape of spacing units shall be such as will result in the efficient and economic development of the pool as a whole, and the size shall be the area that can be efficiently drained by one (1) well.

(3) Subject to this chapter, the order establishing spacing units shall direct that no more than one (1) well may be drilled and produced from the common source of supply on any spacing unit, and that the well shall be drilled at a location authorized by the order, with such exception as may be reasonably necessary where it is shown, upon application, notice, and hearing, and the board finds, that the spacing unit is located on the edge of a pool or field and adjacent to a producing unit, or, for some other reason, the requirement to drill the well at the authorized location on the spacing unit would be inequitable or unreasonable.

(4) An order establishing spacing units for a pool shall cover all lands then determined or then believed to be underlain by the pool and may be modified after notice and hearing by the board from time to time to include additional areas subsequently determined to be underlain by the pool. When found necessary for the prevention of waste, an order establishing spacing units in a pool may be modified after notice and hearing by the board to increase or decrease the size of spacing units in the pool, or to permit the drilling of additional wells on a reasonably uniform plan in the pool.

**History:** En. Sec. 6, Ch. 238, L. 1953; amd. Sec. 58, Ch. 253, L. 1974.

substituted "board" throughout the section for "commission"; substituted "April 1, 1953" in subsection (1) for "the effective date of this act"; and made minor changes in style and phraseology.

#### **Amendments**

The 1974 amendment substituted "chapter" in subsections (1) and (3) for "act";

**60-130. Pooling of interest within spacing unit—voluntary or on order of board after hearing—contents of order.** (1) When two (2) or more separately owned tracts are embraced within a spacing unit, or when there are separately owned interests in all or a part of the spacing unit, then the persons owning those interests may pool their interests for the development and operation of the spacing unit. In the absence of voluntary pooling, within the spacing unit, the board, upon the application of an interested person, may enter an order pooling all interests in the spacing unit for the development and operation thereof. The pooling order shall be made after hearing, and shall be upon terms and conditions that are just and reasonable, and that afford to the owner of each tract or interest in the spacing unit the opportunity to recover or receive, without unnecessary expense, his just and equitable share of the oil or gas produced and saved from the spacing unit. Operations incident to the drilling of a well upon any portion of a spacing unit covered by a pooling order shall be considered, for all purposes, the conduct of the operations upon each separately owned tract in the spacing unit by the several owners thereof. That portion of the production allocated to each tract included in a spacing unit covered by a pooling order shall, when produced, be considered for all purposes to have been produced from the tract by a well drilled thereon.

(2) The pooling order shall provide for the drilling and operating of a well on the spacing unit, and for the payment of the cost thereof, which cost may include a reasonable charge for supervision, handling and storage. As to each owner who refuses to pay his share of the costs of drilling and operating the well, the order shall provide for payment of his share of the cost out of, and only out of, production from the well allocable to his interest in the spacing unit, excluding royalty or other interest not obligated to pay any part of the cost thereof. If a dispute arises as to the cost, the board by order shall determine the proper cost. The order may provide in substance that the owners who agree to share in the cost of drilling and operating the well are, unless they agree otherwise, entitled to receive, subject to royalty or similar obligations, all of the production of the well until they have recovered all of the costs out of the production and thereafter all of the owners in the spacing unit are entitled to receive their respective shares of the production of the well as their interest may appear after deducting their respective shares of current operating costs.

**History:** En. Sec. 7, Ch. 238, L. 1953; amd. Sec. 59, Ch. 253, L. 1974.

throughout the section for "commission"; inserted "by order" in the third sentence of subsection (2) after "board"; and made minor changes in style and phraseology.

#### **Amendments**

The 1974 amendment substituted "board"



**60-131. Agreements for development and operation of pool—not in violation of state antitrust laws when approved by board.** An agreement for the unit or co-operative development and operation of a field or pool or any part of either, or for conducting repressuring or pressure maintenance operations, cycling or recycling operations, including the extraction and separation of liquid hydrocarbons from natural gas in connection therewith, or any other method of unit or co-operative operation, including water flooding, is authorized and may be performed. Such an agreement does not violate any of the statutes of this state relating to trusts, monopolies or contracts and combinations in restraint of trade if the agreement is approved by the board as being in the public interest and reasonably necessary to increase ultimate recovery or to prevent waste of oil or gas.

**History:** En. Sec. 8, Ch. 238, L. 1953; amd. Sec. 60, Ch. 253, L. 1974. in the caption and in the last sentence of this section for "commission"; and made minor changes in style and phraseology.

**Amendments**

The 1974 amendment substituted "board"

**60-131.1. Operation of pool as unit—board to hold hearing—notice.**  
(1) The board, upon the application of persons owning leasehold interests underlying sixty per cent (60%) of the surface within the delineated area, shall hold a hearing to consider the need for the operation as a unit of one (1) or more pools or parts thereof in a field, for pressure maintenance or secondary recovery purposes as to oil or oil and gas, to increase ultimate recovery, or to prevent waste of gas from pools or portions of pools where gas only is produced.

(2) At least sixty (60) days prior to application, the applicant shall, by registered or certified mail, notify all known persons owning an interest in the oil and gas within the proposed unit area as disclosed by the records of the county or counties in which the proposed unit area is situated, at that person's last known address, of the applicant's intention to make the application. At the same time producers shall be furnished with a plan of unit operations. Upon written request of an operator of a lease which is in whole or in part within the confines of the proposed delineated area, the applicant shall furnish the operator with copies of any exhibits to be submitted to the board at the time of hearing.

**History:** En. Sec. 1, Ch. 33, L. 1969; amd. Sec. 1, Ch. 150, L. 1971; amd. Sec. 61, Ch. 253, L. 1974. gas only is produced" at the end of subsection (1); and made minor changes in style and phraseology.

**Amendments**

The 1971 amendment inserted "as to oil or oil and gas" in subsection (1) after "recovery purposes"; added "or to increase ultimate recovery or to prevent waste of gas from pools or portions of pools where

The 1974 amendment designated the first paragraph as subsection (1) and redesignated the second paragraph as subsection (2); substituted "board" for "commission" throughout the section; and made minor changes in style, punctuation and phraseology.

**60-131.2. Board order—criteria.** The board shall make an order providing for the unit operation of a pool or pools or part thereof if it determines, based on evidence presented at the hearing, that:

(1) Such operation is reasonably necessary to increase the ultimate recovery of oil or gas;

(2) The value of the estimated additional recovery of oil or gas less royalties or, as to gas pools only, the value of the economies to be effected, exceeds the estimated additional cost incident to conducting such operations; and

(3) The full areal extent of the pool or pools or part thereof has been reasonably defined and determined by drilling operations.

History: En. Sec. 2, Ch. 33, L. 1969; to gas pools only, the value of the economies to be effected" in subdivision (2).  
amd. Sec. 2, Ch. 150, L. 1971; amd. Sec. 62, Ch. 253, L. 1974. The 1974 amendment substituted "board" for "commission" in the caption and at the beginning of the section; and made minor changes in punctuation and phraseology.

#### Amendments

The 1971 amendment inserted "or, as

**60-131.3. Terms and conditions of order—requirements.** The order shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for unit operations that shall include:

(1) A description of the pool or pools or parts thereof to be so operated, termed the unit area, but only so much of a pool as has reasonably been defined and determined by drilling operations to be productive of oil or gas may be included within the unit area. If the unit is formed solely for production of gas, a spacing unit on which is located a well producing or capable of producing gas on March 1, 1971, may not be included in the unit area without the written consent of the majority in interest of the working interest owners of the spacing unit and well.

(2) A statement of the nature and purpose of the plan and operations contemplated, together with a copy of the proposed unit agreement and unit operating agreement.

(3) A plan for allocating to each tract in the unit area its fair share of the oil and gas produced from the unit area and not required or consumed in the conduct of the operation of the unit area or unavoidably lost. A plan may not be approved by the board until it has considered the relative value that the share of production bears to the relative value of all of the separately owned tracts in the unit area, exclusive of physical equipment utilized in unit operations. In considering this relative value, the board shall weigh the economic value of the gas to all persons affected as compared to the economic value of the oil to all persons affected.

(4) A provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials, and equipment contributed to the unit operations.

(5) A provision providing how the costs of unit operations, including overhead and capital investments, shall be determined and charged to the separately owned tracts, including a provision for carrying or otherwise financing any owner who has not executed the proposed unit operating agreement and who elects to be carried or otherwise financed, allowing an interest charge of the then current prime rate plus two per cent (2%) for the service. Recovery of the money advanced, plus interest, shall

be limited to, and only shall be recoverable from, the owners' share of production. The recovery shall be as follows:

(a) (1) In the case of a field producing oil, or oil and gas, during the period of depletion of the remaining estimated primary reserves from the unit, only from the production that is in excess of the owners' average actual rate of production during the eighteen (18) months immediately preceding the effective date of the unit. For purposes of this subsection, the term "primary reserves" means the oil or gas which would be produced from the unitized pool or pools or a result of the natural energy therein and without the introduction of a secondary recovery program.

(2) During the period subsequent to the depletion of the remaining estimated primary reserves from the unit, from one hundred per cent (100%) of the owners' share of production.

(b) In the case of a field producing only gas, the recovery shall be from one hundred per cent (100%) of the owners' share of production.

(6) A provision for the supervision and conduct of the unit operations, in respect to which each owner shall have a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the interest of the owner.

(7) A provision whereby the unit operator, after having operated for a minimum period of two (2) years, can be challenged by any other owner in the unit, and the challenging owner may succeed to the unit operations upon a showing that: (a) he can operate more efficiently and economically than the present operator; (b) he is qualified and financially responsible; (c) a majority of the other owners, both in number and in percentage and exclusive of the challenged operator, approved the challenging owner becoming unit operator; and, (d) the challenged operator does not initiate the conditions of operations of the challenging owner within sixty (60) days of the challenged operator's receipt of the conditions of operations.

(8) The time when the unit operations shall commence, and the manner in which, and the circumstances under which, the unit operations shall terminate; and

(9) Such additional provisions that are found to be appropriate for carrying on unit operations and for the protection and adjustment of correlative rights.

**History:** En. Sec. 3, Ch. 33, L. 1969; amd. Sec. 3, Ch. 150, L. 1971; amd. Sec. 63, Ch. 253, L. 1974.

#### **Amendments**

The 1971 amendment added the second sentence to subdivision (1); redesignated former subdivisions (5)(a) and (5)(b) as subdivisions (5)(a)(1) and (5)(a)(2), respectively; inserted "In the case of a

field producing oil, or oil and gas" at the beginning of subdivision (5)(a)(1); inserted a new subdivision (5) (b); and made minor changes in phraseology.

The 1974 amendment substituted "March 1, 1971" in the last sentence of subdivision (1) for "the effective date of this act"; substituted "board" in subdivision (3) for "commission"; and made minor changes in style, punctuation and phraseology.

**60-131.4. Plan for unit operations—approval by those paying costs required—conditions for approval.** An order of the board providing for unit operations may not become effective unless and until the plan for unit operations prescribed by the board has been approved in writing by



those persons who, under the board's order, will be required to pay at least eighty per cent (80%) of the costs of the unit operations, and also by the persons owning at least eighty per cent (80%) of the production or proceeds thereof that will be credited to interests which are free of cost, such as royalties, overriding royalties, and production payments, and the board has made a finding, either in the order providing for unit operations or in a supplemental order, that the plan for unit operations has been so approved; however, if one (1) owner who is obligated to pay costs of the unit operation owns eighty per cent (80%) or more, but less than one hundred per cent (100%), the approval of that owner and at least one (1) other such owner is required, and if one (1) person entitled to production or proceeds thereof that will be credited to interests which are free of costs, owns eighty per cent (80%) or more, but less than one hundred per cent (100%), the approval of that person and at least one (1) other such person is required. If the plan for unit operations has not been so approved at the time the order providing for unit operations is made, the board shall, upon application and notice, hold such supplemental hearings as may be required to determine if and when the plan for unit operations has been so approved. If the requisite number of owners and persons and the requisite percentage of interests in the unit area do not approve the plan for unit operations within a period of six (6) months from the date on which the order providing for unit operations is made, the board shall revoke the order unless for good cause shown the board extends the time.

**History:** En. Sec. 4, Ch. 33, L. 1969; throughout this section for "commission"; amd. Sec. 64, Ch. 253, L. 1974. and made minor changes in style and phraseology.

#### **Amendments**

The 1974 amendment substituted "board"

**60-131.5. Amendment of board order—conditions.** An order providing for unit operations may be amended by an order made by the board in the same manner and subject to the same conditions and notice as an original order providing for unit operations, however, (a) if such an amendment affects only the rights and interests of the owners, the approval of the amendment by the persons owning interest which are free of costs, such as royalties, overriding royalties and production payments, is not required, and (b) an order of amendment may not change the percentage for the allocation of oil and gas as established for any tract by the original order, except with the consent of all persons owning oil and gas rights in the tract, or change the percentage for the allocation of cost as established for any tract by the original order, except with the consent of all owners in the tract.

**History:** En. Sec. 5, Ch. 33, L. 1969; in the caption and near the beginning of amd. Sec. 65, Ch. 253, L. 1974. this section for "commission"; and made minor changes in punctuation and phraseology.

#### **Amendments**

The 1974 amendment substituted "board"

**60-131.6. Units established by previous order may be included—manner of inclusion.** The board, by an order, may provide for the unit

operation of a pool or pools or parts thereof that embrace a unit established by an order of the board made prior to February 13, 1969. The order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production so allocated thereto shall then be allocated among the tracts included in the previously established unit area in the same proportions as those specified in the previous order. Any new owner whose interest by the order is added to the unit area and who becomes liable for his proportionate share of the costs of unit operations is not liable for any unit operating costs incurred prior to the person's entry in the unit. At the time the interest is included in the unit, an equipment inventory shall be made in order to charge the newly committed interest with its proportionate share of capital investment at its then value. An oil-in-storage inventory shall be taken immediately prior to adding the newly committed interest.

**History:** En. Sec. 6, Ch. 33, L. 1969; amd. Sec. 4, Ch. 150, L. 1971; amd. Sec. 66, Ch. 253, L. 1974.

#### **Amendments**

The 1971 amendment substituted "prior to the effective date" for "subsequent to the effective date" in the first sentence.

The 1974 amendment substituted "board" in the first sentence for "commission"; substituted "February 13, 1969" at the end of the first sentence for "the effective date of this amendment to Title 60, chapter 1, Revised Codes of Montana"; and made minor changes in phraseology.

**60-131.8. Presumptions—compliance with board order constitutes fulfillment of lease or contract obligations.** All operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of the unit area, shall be considered for all purposes the conduct of those operations upon each tract in the unit area by the several owners thereof. The portion of the unit production allocated to a tract in a unit area shall, when produced, be considered, for all purposes, to have been actually produced from the tract by a well drilled thereon. Operations conducted pursuant to an order of the board providing for unit operations shall constitute a fulfillment of all the express or implied obligations of each lease or contract covering lands in the unit area to the extent that the obligations cannot be performed because of the order of the board.

**History:** En. Sec. 8, Ch. 33, L. 1969; amd. Sec. 67, Ch. 253, L. 1974.

for "commission" throughout this section; and made minor changes in punctuation and phraseology.

#### **Amendments**

The 1974 amendment substituted "board"

**60-131.9. Property rights—operator's lien—perfection of lien.** That portion of the unit production allocated to any tract, and the proceeds from the sale thereof, shall be the property and income of the several persons to whom, or to whose credit, the same are allocated or payable under the order providing for unit operations, except that the operator of the unit shall, subject to section 60-131.3, subdivision (5) (a) (1), have a first and prior lien upon each owner's oil and gas rights and his share of unitized production to secure the payment of such owner's proportionate part of developing and operating the unit area. Such lien may be perfected and enforced in the same manner as provided in Title 45,

chapter 5, Revised Codes of Montana, 1947, as amended. Upon demand by any owner of working interest in any tract to which gas has been allocated, the unit operator shall deliver such allocated share of gas to the owner in kind; but the operator and the other owners of interest shall not be required to bear the cost of providing additional facilities for the delivery of such gas.

**History:** En. Sec. 9, Ch. 33, L. 1969; amd. Sec. 5, Ch. 150, L. 1971.

of that section; and added the third sentence.

#### Amendments

The 1971 amendment changed the reference in the first sentence to section 60-131.3 in accordance with the amendment

#### Effective Date

Section 6 of Ch. 150, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

### 60-131.10. Contract relating to tract not terminated by board order.

A division order or other contract relating to the sale or purchase or production from a tract may not be terminated by the order providing for unit operations, but shall remain in force and apply to oil and gas allocated to the tract until terminated in accordance with the provisions thereof.

**History:** En. Sec. 10, Ch. 33, L. 1969; amd. Sec. 68, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment substituted "board" in the caption for "commission"; and made minor changes in phraseology.

**60-131.11. Title to oil and gas rights not affected by board order—allocation of property.** Except to the extent that the parties affected so agree, an order providing for unit operations does not result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations hereunder shall be acquired for the account of the owners within unit area, and shall be the property of those owners in the proportion that the expenses of unit operations are charged.

**History:** En. Sec. 11, Ch. 33, L. 1969; amd. Sec. 69, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment substituted "board" in the caption for "commission"; and made minor changes in phraseology.

**60-131.12. Trade not restrained by unit operations.** The formation of a unit as provided in sections 60-131.1 through 60-131.13 and the operation of the unit under order of the board shall not be in violation of any statute of this state relating to trusts, monopolies, contracts or combinations in restraint of trade.

**History:** En. Sec. 12, Ch. 33, L. 1969; amd. Sec. 70, Ch. 253, L. 1974.

provided in sections 60-131.1 through 60-131.13" for "as herein provided"; substituted "board" for "commission"; and made a minor change in phraseology.

#### Amendments

The 1974 amendment substituted "as

**60-132. Administrative Procedure Act—orders—notice.** (1) The Montana Administrative Procedure Act (Title 82, chapter 42, R. C. M. 1947) applies to this chapter.



(2) An order, or amendment thereof, except in an emergency, may not be made by the board without a public hearing upon at least ten (10) days' notice. The public hearing shall be held at such time and place as may be prescribed by the board, and any interested person is entitled to be heard.

(3) When an emergency requiring immediate action is found to exist, the board may issue an emergency order without advance notice or hearing, which shall be effective upon promulgation. An emergency order may not remain in effect more than fifteen (15) days.

(4) If notice is required by the chapter and the Montana Administrative Procedure Act does not apply, the notice shall be made by publication in one (1) or more issues of a newspaper in general circulation in Helena and a newspaper of general circulation in the county where the land or some part thereon is situated, and the board may also cause publication to be made in a trade journal or bulletin of general circulation in the oil and gas industry in the state.

(5) Proof of service by publication under subsection (4) shall be made by the affidavit of the printer or publisher of the newspaper, trade journal, or bulletin in which the notice is published, or by a foreman or principal clerk of the newspaper, bulletin or trade journal.

(6) Except as provided otherwise in this chapter, the board may act upon its own motion, or upon the petition of an interested person. On the filing of a petition concerning a matter within the jurisdiction of the board, the board shall promptly fix a date for a hearing thereon, and shall cause notice of the hearing to be given. The hearing shall be held without undue delay after the filing of the petition. The board shall enter its order within thirty (30) days after the hearing.

**History:** En. Sec. 9, Ch. 238, L. 1953; amd. Sec. 1, Ch. 213, L. 1961; amd. Sec. 71, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment redesignated the subsections; substituted "board" for "commission" throughout the section; substituted subsection (1) for former subsection A; substituted "If notice is required \* \* \* notice shall be made" at the beginning of subsection (4) for "In all other cases";

inserted "under subsection (4)" in subsection (5); substituted "chapter" in subsection (6) for "act"; deleted large portions of former subsection D relating to the giving of notice by personal service or mail, proof of service, and power of the commission secretary with regard thereto; deleted former subsection E relating to rules, regulations and orders of the commission; and made numerous minor changes in phraseology.

**60-133. Subpoena power of board—chapter does not abrogate civil actions—enforcement of chapter when board fails to enjoin violations.** (1) If the Montana Administrative Procedure Act does not apply, the board may subpoena witnesses, administer oaths, and require the production of records, books, and documents for examination at any hearing or investigation conducted by it. Witnesses subpoenaed under this subsection shall be paid the same per diem and mileage as is provided to be paid to witnesses attending the district courts of this state.

(2) This chapter, a suit by or against the board, a violation charged or asserted against a person under this chapter, or a rule or order issued under this chapter, does not impair, abridge, or delay a cause of action

for damages or other civil remedy, which a person may have or assert against a person violating this chapter, or a rule or order issued under it. A person so aggrieved by the violation may sue for and recover such damages or relief as he otherwise may be entitled to receive. If the board fails to bring suit to enjoin a violation or threatened violation of this chapter, or a rule or order of the board within ten (10) days after receipt of written request to do so by a person who is or will be adversely affected by the violation, the person making the request may bring the suit in his own behalf to restrain the violation or threatened violation in a court in which the board might have brought suit. The board shall be made a party defendant in the suit in addition to the person violating or threatening to violate this chapter, or a rule or order of the board, and the action shall proceed and injunctive relief may be granted without bond in the same manner as if suit had been brought by the board.

(3) If a person fails or refuses to comply with the subpoena issued by the board or if a witness refuses to testify as to any material matter regarding which he may be interrogated, any district court in the state, upon good cause shown by the application of the board, may issue a warrant of attachment for the person and if after hearing the court finds his failure or refusal to be unjustified, compel him to comply with the subpoena, and to attend before the board and produce any subpoenaed records, books, and documents for examination, and to give his testimony. The court may punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein.

History: En. Sec. 10, Ch. 238, L. 1953;  
amd. Sec. 72, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment substituted references to the "board" for references to "commission" throughout the section; inserted "If the Montana Administrative

Procedure Act does not apply" at the beginning of subsection (1); inserted "under this subsection" in the second sentence of subsection (1); substituted "chapter" throughout subsection (2) for "act"; deleted "regulation" throughout subsection (2) after "rule"; and made minor changes in style, punctuation and phraseology.

**60-134. Rehearing.** A person adversely affected by a rule or order of the board may within twenty (20) days after its effective date apply to the board in writing for a rehearing. The application for rehearing shall be acted upon within ten (10) days after its filing, and if granted, the rehearing shall be held without undue delay.

History: En. Sec. 11, Ch. 238, L. 1953;  
amd. Sec. 73, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment deleted "regula-

tion" in the first sentence after "rule"; substituted "board" in two places for "commission"; and made a minor change in phraseology.

**60-135. Court review of order of board by suit for injunction—trial de novo—temporary restraining order, when allowed, bond—appeals.** (1) Any interested person adversely affected by any provision of this chapter, or by any rule or order adopted by the board hereunder, or by any act done or threatened thereunder, may obtain court review and seek relief by a suit for an injunction against the board as defendant, which suit may be instituted in the district court of the county where the board keeps its principal office, or in the district court of any county wherein

the land involved or any part thereof is situated. The term "interested person," as used herein, shall be interpreted broadly and liberally, especially where the suit involves the right to drill a well, or involves some other act which clearly affects the plaintiff even though the effect is indirect; and if the act complained of involves a general order for a pool, or the right to drill a well therein, a person who owns or has an interest in a well in the pool, which well is capable of producing oil or gas, shall be considered to be, *prima facie*, an interested person. The suit shall be given a preferential setting, and shall be tried *de novo* and disposed of as an ordinary civil suit, and not upon the record of any hearing before the board. The statute, rule, order, or decision involved in the suit shall be *prima facie* valid; however, the finding of fact, actual or presumed, made by the board in support of the rule, order, or decision involved in the suit is not binding on the court though supported by evidence introduced at a hearing before the board. The court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any board action. The court shall:

(a) compel board action unlawfully withheld or unreasonably delayed; and (b) hold unlawful and set aside board action, findings, and conclusions found to be:

(1) arbitrary, unreasonable, capricious, and abuse of discretion, or otherwise not in accordance with law;

(2) contrary to constitutional right, power, privilege, or immunity;

(3) in excess of statutory jurisdiction, authority or limitations, or short of statutory right;

(4) without observance of procedure required by law; or

(5) unwarranted by the facts.

The court shall consider all the evidence, shall pass on the credibility of witnesses and the weight to be given their testimony, and shall resolve such fact issues as may be necessary for decision in the case.

(2) A temporary restraining order or temporary injunction of any kind may not be granted against the board and its members or against the attorney general, or against an employee of the board, restraining the board and its members, or employees, or the attorney general, from enforcing this chapter, or any rule or order made thereunder, until it is shown to the satisfaction of the court that the act done or threatened is probably without sanction of the law or that the provisions of this chapter, or the rule or order complained of is probably invalid or unreasonable, and that, if enforced against the complaining party, will probably cause an irreparable injury. With respect to an order or decree granting temporary injunctive relief, the nature and extent of the probable invalidity of the statute, or of any provision of this chapter, or of a rule or order thereunder involved in the suit, must be recited in the order or decree granting the temporary relief, as well as a clear statement of the probable damage relied upon by the court as justifying temporary injunctive relief.

(3) A temporary restraining order or temporary injunction of any kind against the board or its members, or its employees, or the attorney



general, may not be effective until the plaintiff executes a bond with sufficient sureties in such amount and upon such conditions as the court directs. The bond shall be made payable to the state of Montana, shall be approved by the judge of the court, and shall be for the use and benefit of all persons who may be injured by the acts done under the protection of the temporary restraining order or temporary injunction. A person claiming injury must bring suit within six (6) months after the date of the final determination of the validity, in whole or in part of the provisions of the chapter or the rule or order, the enforcement of which was enjoined; otherwise the right to bring such suit is forever barred.

(4) An appeal to the supreme court may be taken from any final judgment, decree or order in the action, as provided in the Rules of Appellate Civil Procedure of Title 93, R. C. M. 1947.

**History:** En. Sec. 12, Ch. 238, L. 1953; amd. Sec. 74, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment substituted "chapter" throughout the section for "act"; substituted "board" throughout the section for "commission"; deleted references to agents

and representatives before and after "employee" in the first sentences of subsections (2) and (3); deleted references to regulations after "rule" throughout the section; substituted "the Rules of Appellate Civil Procedure" in subsection (4) for "chapter 80"; and made minor changes in style, punctuation and phraseology.

**60-136. Enjoining violations of chapter.** Whenever it appears that a person is violating or threatening to violate this chapter, or a rule or order of the board, the board shall bring suit against that person in the district court of any county where the violation occurs or is threatened, to restrain the person from continuing the violation or from carrying out the threat of violation. In the suit, the court may grant to the board, without bond or other undertaking, such prohibitory and mandatory injunctions as the facts may warrant, including temporary restraining orders.

**History:** En. Sec. 13, Ch. 238, L. 1953; amd. Sec. 75, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment substituted "chap-

ter" near the beginning of the section for "act"; substituted "board" throughout the section for "commission"; and made minor changes in phraseology.

### 60-137, 60-138. Repealed.

#### Repeal

Sections 60-137 and 60-138 (Secs. 14, 15, Ch. 238, L. 1953), relating to rules and regulations of the board of railroad commis-

sioners and of the oil conservation board, and substitution of the commission for those boards, were repealed by Sec. 108, Ch. 253, Laws of 1974.

**60-140. Lands subject to act.** This chapter applies to all lands in the state lawfully subject to its taxation and police powers. It applies to lands of the United States or to lands subject to the jurisdiction of the United States only to the extent that control and supervision of conservation of oil and gas by the United States on its lands fails to effect the intent and purposes of this chapter and otherwise applies to those lands to such extent as any officer of the United States having jurisdiction, or his duly authorized representative, approves any of the provisions of this chapter or an order of the board which affect those lands. This chapter also applies to any lands committed to a unit agreement approved by the secretary

of the interior or his duly authorized representative, except that the board may, with respect to those unit agreements, suspend the application of this chapter or any part of this chapter so long as the conservation of oil and gas and the prevention of waste as provided in this chapter is accomplished under the unit agreements; the suspension does not relieve an operator or owner from making such reports as may be required by the board with respect to operations and production under the unit agreement, and the suspension does not relieve an operator or owner from the payment of taxes on his oil and gas production or payment for permit fees as required by this chapter.

**History:** En. Sec. 17, Ch. 238, L. 1953;  
amd. Sec. 76, Ch. 253, L. 1974.

ter" and references thereto throughout this section for "act" and references thereto; substituted "board" throughout the section for "commission"; and made minor changes in punctuation and phraseology.

**Amendments**

The 1974 amendment substituted "chap-

**60-141. Co-operation with other governmental units and agencies.** The board may co-operate with any other state, interstate, or federal agency, and other governmental agencies of the state to effect the objects and purposes of this act and expend such funds as may be reasonably necessary in connection therewith.

**History:** En. Sec. 18, Ch. 238, L. 1953;  
amd. Sec. 77, Ch. 253, L. 1974.

**Amendments**

The 1974 amendment substituted "board" for "commission"; and made minor changes in style and phraseology.

**60-142. Penalties.** If a person willfully violates any lawful rule or order of the board, or if a person, for the purpose of evading this chapter, or any rule or order of the board, knowingly and willfully (1) makes or causes to be made a false entry or statement in a report required by this chapter or by a rule or order of the board, or a false entry in a record, account, or memorandum required by this chapter, or by a rule or order, or (2) omits, or causes to be omitted, from the record, account, or memorandum, full, true, and correct entries as required by this chapter, or by a rule or order, or (3) removes from this state or destroys, mutilates, alters, or falsifies the record, account, or memorandum, that person is guilty of a misdemeanor and shall be subject to a fine of not more than five thousand dollars (\$5,000) or imprisonment in a county jail for a term not exceeding six (6) months, or to both the fine and imprisonment.

**History:** En. Sec. 19, Ch. 238, L. 1953;  
amd. Sec. 78, Ch. 253, L. 1974.

before "or order"; substituted "board" throughout the section for "commission"; substituted "chapter" throughout the section for "act"; and made minor changes in style and phraseology.

**Amendments**

The 1974 amendment deleted references to regulations throughout the section

**60-143. Chapter does not constitute oil or gas wells as public utilities.** Nothing in this chapter shall in any manner be construed as constituting or attempting to constitute oil or gas wells as a public utility or utilities.

**History:** En. Sec. 20, Ch. 238, L. 1953;  
amd. Sec. 79, Ch. 253, L. 1974.

**Amendments**

The 1974 amendment substituted "chapter" for "act"; and made a minor change in phraseology.

**60-144. Owners shall make available to board cores and cuttings.** An owner drilling a well for gas or oil shall make available to the board at its field offices representative cores or chips, when available, and the cuttings from the well. However, cores, chips or cuttings need not be so made available for a period of six (6) months following completion or abandonment of the wells. The board may, however, relieve the owner of a well of the obligation to furnish cores, chips, or cuttings when in the opinion of the board, the furnishing thereof would be unduly burdensome for the owner; however, the owner desiring relief must apply to and receive permission from the board to not so furnish. The owner of a stratigraphic test well drilled for the purpose of obtaining lithologic information useful in potential oil and gas operations, as such well is defined by the board's rules shall within six (6) months from the date of the cessation of the drilling of the well, make available to the board, complete sets of sample cuttings and representative cores or chips and well logs of the wells, which logs shall include among other information the size of casing used and the type and depth of water if any located; the cuttings, cores, chips and logs shall be impounded and kept secure and confidential by the board until such time that the board desires to use the same; however, the board may not use the logs, chips, cores and cuttings from stratigraphic test wells until a period of three (3) years from the date of their impounding by the board has elapsed unless the owner of the stratigraphic test well consents to their use by the board prior to the expiration of the three (3) year period. The board, during the period of impoundment for any cores, cuttings, chips, or logs from any stratigraphic test well, may not give any person access to the cores, chips, cuttings or logs, and it may not disclose any information relating thereto or derived therefrom. The board shall require, and the owner of a stratigraphic test well shall furnish, prior to the commencement of drilling of the well, a good and sufficient surety bond, to be approved prior to the commencement of the drilling, conditioned upon the proper plugging of the well prior to abandonment, the amount of the bond to be determined by the estimated depth as in the board's rules provided for oil and gas wells, and, prior to abandonment, the wells shall be plugged by the owner thereof, or by the surety should the owner be in default, the plugging to conform to the standards set down and determined by the board.

**History:** En. Sec. 21, Ch. 238, L. 1953; amd. Sec. 1, Ch. 224, L. 1955; amd. Sec. 1, Ch. 234, L. 1959; amd. Sec. 1, Ch. 208, L. 1973; amd. Sec. 80, Ch. 253, L. 1974.

The 1974 amendment substituted "board" throughout the section for "commission"; and made minor changes in punctuation and phraseology.

#### **Amendments**

The 1973 amendment deleted from the end of the section a sentence reading: "The provisions of this section shall not apply to core holes or tests less than one thousand (1,000) feet in depth drilled primarily for structural information."

#### **Effective Date**

Section 2 of Ch. 208, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

**60-145. Privilege and license tax—quarterly statements—penalties—drilling permit fees—oil and gas conservation moneys.** (1) For the purpose of providing funds for defraying the expenses of the operation and



enforcement of this chapter, and expenses of the board, the operators and producers of oil and gas shall pay an assessment not to exceed the amounts set forth in the following schedule on each barrel of crude petroleum originally produced, saved and marketed or stored within the state, or exported from the state, and on each ten thousand (10,000) cubic feet of natural gas produced, saved and marketed or stored within the state, or exported therefrom:

(a) On leases on which wells are producing an average of twenty-five (25) barrels of crude petroleum per day, or less, an assessment not to exceed three-eighths of one cent ( $\frac{3}{8}\phi$ ) per barrel;

(b) On leases on which wells are producing an average of more than twenty-five (25) barrels of crude petroleum per day, an assessment not to exceed three-fourths of one cent ( $\frac{3}{4}\phi$ ) per barrel; and,

(c) On wells producing, saving and marketing, storing, or exporting, natural gas, the operators and producers shall pay an assessment not to exceed two and one-half ( $2\frac{1}{2}$ ) mills per ten thousand (10,000) cubic feet of natural gas where said gas is marketed for less than fifteen cents (15 $\phi$ ) per thousand (1,000) cubic feet and an assessment not to exceed five (5) mills per ten thousand (10,000) cubic feet of natural gas where said gas is marketed for fifteen cents (15 $\phi$ ) or more per thousand (1,000) cubic feet.

(2) The board shall by order, without prior notice, or hearing, fix the amount of the assessments and may, from time to time, without prior notice or hearing, reduce or increase the amount thereof as, in its judgment, the expenses chargeable against the oil and gas conservation fund may require; however, the assessments fixed by the board may not exceed the limits prescribed in this section. The amounts of the assessments shall be a percentage factor (not to exceed one hundred per cent (100%)) of the rates set forth in subsections (a), (b), and (c) above, and the same percentage factor shall be applied by the board in fixing the amount of the assessment on each barrel of crude production and each ten thousand (10,000) cubic feet of natural gas mentioned in those subsections. The producers of the crude petroleum and natural gas shall pay the assessments on each barrel of crude petroleum and each ten thousand (10,000) cubic feet of natural gas produced for themselves, as well as for others, including royalty holders, and the producers shall be reimbursed for the payments made on crude oil and natural gas produced for others in the same manner as they are reimbursed for net proceeds tax paid on crude petroleum or natural gas produced for others under section 84-6208.

(3) For the purposes of this section, a "lease" means that particularly described tract of land contained in a contract in writing whereby a person having a legal estate in the land so described conveys a portion of his interest to another, in consideration of a certain rental or other recompense or consideration. Further, for the purposes of this section, leases owned or operated by one (1) lessee which in whole or in part cover or affect an underground reservoir containing a common accumulation of crude petroleum oil or natural gas, or both, or which are encompassed within or affected by one (1) particular unit agreement shall be considered as one (1) lease relative to payments to be made under this section.

(4) In addition to the above-mentioned privilege and license tax, a person, before commencing the drilling of an oil or gas well or stratigraphic test well or core hole, shall secure from the board a drilling permit and shall pay to the board therefor the following amounts: for each well whose estimated depth is thirty-five hundred (3500) feet or less, twenty-five dollars (\$25.00); from thirty-five hundred and one (3501) feet to seven thousand (7,000) feet, seventy-five dollars (\$75.00); seven thousand (7,000) feet and deeper, one hundred fifty dollars (\$150.00).

(5) Each producer of crude petroleum in the state shall, not later than the last day of each of the calendar months of February, May, August and November, of each calendar year, render a true statement to the state treasurer of the state, and a duplicate thereof to the board, duly signed and sworn to, of all crude petroleum produced by him in this state during the preceding quarter, and containing such other information as the board may require, and shall accompany the statement with the payment to the state treasurer of the assessment provided for in subsection (1) of this section, for the period covered by the statement. Each producer of natural gas in the state shall render like statements to the state treasurer of all natural gas produced by him in this state, and shall make payment of the assessment provided for in subsection (1) of this section, at such times and for such periods as may be prescribed by rule of the board. Any producer carrying on business at more than one (1) place or location in this state may include all those places of business in one (1) statement.

(6) An assessment not paid within the time specified is delinquent, and a penalty of twenty-five per cent (25%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid. Upon request of the board the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the same.

(7) All money collected under this chapter shall be deposited in the earmarked revenue fund by the state treasurer of the state, and shall be used for the purpose of paying all expenses of the board and for no other purpose; all these moneys shall be used by the board subject to the approval of the department of administration and biennial appropriations by the legislative assembly.

**History:** En. Sec. 22, Ch. 238, L. 1953; amd. Sec. 1, Ch. 234, L. 1955; amd. Sec. 1, Ch. 198, L. 1957; amd. Sec. 1, Ch. 47, L. 1961; amd. Sec. 160, Ch. 147, L. 1963; amd. Sec. 1, Ch. 315, L. 1973; amd. Sec. 1, Ch. 130, L. 1974; amd. Sec. 81, Ch. 253, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 130, and once by Ch. 253. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

The 1973 amendment increased the assessment in subdivision (1)(a) from  $\frac{1}{4}$  cent to  $\frac{3}{8}$  cent per barrel and in subdivision (1)(b) from  $\frac{1}{2}$  cent to  $\frac{3}{4}$  cent per barrel; increased the assessment in the first sentence of subdivision (1)(c) from one mill to  $2\frac{1}{2}$  mills per ten thousand feet where sold for less than 15¢ per thousand feet, and from one mill to five mills per ten thousand feet where sold for 15¢ or more per thousand feet; and inserted "or stratigraphic test well or core hole" in subsection (4).

Chapter 253, Laws of 1974, substituted "chapter" for "act" throughout the sec-

tion; substituted "board" for "oil and gas conservation commission" and "commission" throughout the section; deleted "Such payments shall be made during the time the oil and gas conservation commission is in existence" at the end of subsection (1); deleted "in the first instance" near the beginning of subsection (2) after "amount of the assessments"; deleted "to be fixed by the commission in the first instance and from time to time as herein provided" at the beginning of the second sentence of subsection (2) after "the assessments"; substituted "department of administration" near the end of subsection

(7) for "controller"; deleted two sentences at the end of subsection (7) relating to disposition of moneys on termination of the commission; deleted a former last subsection relating to commission members, compensation, expenses, and expenditures; and made numerous minor changes in style, punctuation and phraseology. For material deleted after subsection (7), see parent volume.

Chapter 130, Laws of 1974, substituted "February, May, August and November" in the first sentence of subsection (5) for "January, April, July and October"; and made minor changes in style.

## 60-146, 60-147. Repealed.

### Repeal

Sections 60-146 and 60-147 (Secs. 1, 2, Ch. 32, L. 1957; Sec. 161, Ch. 147, L. 1963),

relating to the petroleum field station of the bureau of mines at Billings, were repealed by Sec. 208, Ch. 253, Laws of 1974.

**60-148. Availability of facilities to bureau.** The board may make available to the authorized personnel or representatives of the bureau of mines and geology such facilities, equipment, records, and cores and cuttings, or samples of cores and cuttings, as are, or may be, required by the bureau in the furtherance of its oil and gas research and study.

**History:** En. Sec. 3, Ch. 32, L. 1957; amd. Sec. 82, Ch. 253, L. 1974.

at the beginning of the section for "commission"; inserted "of mines and geology" after "the bureau"; and made a minor change in phraseology.

### Amendments

The 1974 amendment substituted "board"

**60-149. Department to inventory abandoned wells and seismic operations; reclamation procedures.** (1) The department of natural resources and conservation shall maintain a list of the abandoned oil or gas wells, injection wells, sumps, and seismographic shot holes in the state which disturb land, water, or wildlife resources to a degree not in compliance with plugging, pollution prevention, and reclamation rules of the oil and gas board. This list shall be compiled from petitions or written statements from the owners of surface rights or lessees.

(2) The board shall check the list supplied by the department under the preceding subsection against its drilling records and shall determine the name of the person who abandoned the well, sump, or hole, whenever this information is available. When a person so listed applies to the board for a new drilling permit, the board may issue the permit only after approving a plan by which the applicant will reclaim the land disturbed by his abandoned wells, sumps, or holes within three years.

(3) When the person who abandoned a well, sump, or hole cannot be identified or located under the preceding subsection, the board shall notify the department of natural resources and conservation. The department may then reclaim the disturbed land with funds available from the resource indemnity trust fund, under section 84-7009, when available.

**History:** En. 60-149 by Sec. 3, Ch. 260, L. 1974.



CHAPTER 2—PETROLEUM PRODUCTS—STANDARDS—REGULATION  
OF MANUFACTURE AND DISTRIBUTION

**60-203.2. Enforcement of chapter—rules and regulations.**

**Cross-References**

Functions transferred to department of  
business regulation, sec. 82A-403(3).

**60-225. Repealed.**

**Repeal**

Section 60-225 (Sec. 3, Ch. 153, L. 1965),  
relating to the place of business license

and fee for petroleum dealers, was repealed  
by Sec. 1, Ch. 142, Laws of 1974.

CHAPTER 3—STATE MANUFACTURE AND SALE OF PETROLEUM PRODUCTS  
DECLARED PUBLIC PURPOSE

(Repealed—Section 103, Chapter 326, Laws of 1974)

**60-301 to 60-306. (4192.1 to 4192.6) Repealed.**

**Repeal**

Sections 60-301 to 60-306 (Secs. 1 to 6,  
Ch. 189, L. 1933), relating to state manu-

facture and sale of petroleum products as  
a public purpose, were repealed by Sec.  
103, Ch. 326, Laws of 1974.

CHAPTER 8—UNDERGROUND GAS STORAGE RESERVOIRS

Section

60-801. Definitions.

60-802. Underground storage.

60-803. Eminent domain—use and limitations.

60-804. Certificate of board—publication.

60-805. Proceedings.

**60-801. Definitions.** Unless the context requires otherwise, in this chapter:

(1) "Underground reservoir" means any subsurface sand, stratum or formation of the earth suitable for the injection and storage of natural gas therein and the withdrawal of natural gas therefrom;

(2) "Natural gas" means gas either while in its original state or after the same has been processed by removal therefrom of component parts not essential to its use for light and fuel;

(3) "Native gas" means gas which has not been previously withdrawn from the earth;

(4) "Natural gas public utility" means any person, firm or corporation authorized to do business in this state and engaged in the business of transporting or distributing natural gas by means of pipelines into, within or through this state for ultimate public use;

(5) "Board" means the board of oil and gas conservation provided for in section 82A-1508;

(6) "Underground storage" means the process of injecting and storing of natural gas within and withdrawing of natural gas from an underground reservoir.

**History:** En. Sec. 1, Ch. 259, L. 1955;  
amd. Sec. 83, Ch. 253, L. 1974.

**Amendments**

The 1974 amendment substituted the preliminary clause for "As used in this

act"; substituted the definition of "board" in subdivision (5) for a former definition defining "commission" as the "oil and gas conservation commission of the state of Montana"; and made minor changes in style and phraseology.

**60-802. Underground storage.** (1) The underground storage of natural gas which promotes conservation thereof, which permits the building of reserves for orderly withdrawal in periods of peak demand, which makes more readily available natural gas to the domestic, commercial and industrial consumers of this state, or which provides a better year-round market to the various gas fields, serves the public interest and welfare of this state.

(2) Therefore, in the manner hereinafter provided the board and the court may find and determine that the underground storage of natural gas as hereinbefore defined is in the public interest.

**History:** En. Sec. 2, Ch. 259, L. 1955;  
amd. Sec. 84, Ch. 253, L. 1974.

**Amendments**

The 1974 amendment substituted "board" in subsection (2) for "commission"; and made minor changes in style.

**60-803. Eminent domain—use and limitations.** (1) A natural gas public utility may acquire through the exercise of the right of eminent domain as provided in this chapter for its use for the underground storage of natural gas an underground reservoir which the board finds is suitable and in the public interest for the underground storage of natural gas, and in connection with the underground reservoir the utility may acquire such other interests in property as may be required adequately to maintain and operate the underground reservoir facilities. The acquisition by the exercise of the right of eminent domain of underground reservoirs granted by this section is limited as follows:

(a) No sand, formation, or stratum which is producing or has produced, or which is capable of producing oil, is subject to appropriation under this section.

(b) No gas-bearing sand, formation, or stratum is subject to appropriation under this section, unless the recoverable volumes of native gas therein have all been produced or unless the sand, formation or stratum has a greater value or utility as an underground reservoir for the purpose of ensuring an adequate supply of natural gas for domestic, commercial, or industrial consumers of natural gas, or for the conservation of natural gas, than for the production of the remaining relatively small volumes of native gas as compared with the original volumes of natural gas therein. Gas, sand, formation or stratum may not be acquired under this chapter when the gas in the underground reservoir is being used for the secondary recovery of oil, unless gas in necessary and required amounts is furnished to the operator of the secondary recovery operations for as long as oil is produced in paying quantities in the secondary operations for the recovery of oil at the same cost as the cost to the operator at the time of acquisition of the gas being used in the secondary operations, not exceeding, however, the quantity of the appropriated gas that remained recoverable from the sand, formation or stratum at the time of its acquisition, if the operator was at that time entitled to the whole thereof, or if the operator was at that time entitled to less than the whole thereof, then not to exceed the quantity thereof to which the operator was then entitled.

(c) Only the area of the underground sand, formation or stratum as may reasonably be expected to be penetrated by gas displaced or injected into the underground gas storage reservoir may be appropriated.

(d) No rights or interests in existing underground gas reservoirs, being used for the injection, storage or withdrawal of natural gas, owned or operated by a natural gas public utility other than the natural gas public utility seeking to acquire the same, are subject to appropriation.

(2) The exercise of the right of eminent domain granted by this section shall be without prejudice to the rights of the owner of the lands or of other rights or interests therein to drill or bore into or through the underground reservoir so appropriated in a manner that complies with orders and rules of the board issued for the purpose of protecting the underground reservoir against pollution and against the escape of natural gas therefrom, and shall be without prejudice to the rights of the owner of the lands or other rights or interests therein as to all other uses thereof. The additional cost of complying with those rules or orders in order to protect the storage reservoir shall be paid by the natural gas public utility.

**History:** En. Sec. 3, Ch. 259, L. 1955; amd. Sec. 85, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment substituted "board" in both subsections for "commission"; sub-

stituted "chapter" in the second sentence of subdivision (1)(b) for "act"; deleted "as defined in this act" in subdivision (1)(d) after the first reference to "public utility"; and made minor changes in style, punctuation and phraseology.

**60-804. Certificate of board—publication.** A natural gas public utility desiring to exercise the right of eminent domain as to any property for use for underground storage of natural gas shall, as a condition precedent to the filing of its complaint in the district court, apply for and obtain from the board a certificate setting out the findings of the board:

(a) that the underground sand, stratum or formation sought to be acquired is suitable for an underground reservoir for the storage of natural gas and that its use for such purposes is in the public interest;

(b) the amount of native gas, if any, remaining therein and the portion thereof recoverable;

(c) and that the applicant has in good faith sought to acquire the rights sought under this chapter. The board may not issue the certificate until after a public hearing is had on the application, pursuant to notice given to all persons known to have an interest in the property proposed to be acquired in the manner provided by the laws of the state for service of process in a civil action.

**History:** En. Sec. 4, Ch. 259, L. 1955; amd. Sec. 86, Ch. 253, L. 1974.

#### Amendments

The 1974 amendment substituted "board" throughout the section for "commission"; substituted "rights sought under this chapter" in subdivision (c) for "rights sought hereunder"; deleted "as set forth in Chap-

ter 30, Title 93, Revised Codes of Montana of 1947, as amended, and the executive secretary of the commission shall for such purposes be vested with the same powers and charged with the same duties as the clerk of the district court has under said chapter" at the end of the section; and made minor changes in style, punctuation and phraseology.

**60-805. Proceedings.** A natural gas public utility having first obtained a certificate from the board desiring to exercise the right of eminent do-



main for the purpose of acquiring property for the underground storage of natural gas shall do so in the manner provided in this section. The natural gas public utility shall present to the district court of the county wherein the land is situated a complaint setting forth the purpose for which the property is sought to be acquired, a description of the property sought to be appropriated and the names of the owners thereof as shown by the records of the county. The plaintiff shall file the certificate of the board as a part of its complaint and no order by the court granting the complaint shall be entered without the certificate being filed therewith. Subsequent proceedings shall follow the procedure provided by law in the exercise of the rights of eminent domain, sections 93-9901 et seq.

**History:** En. Sec. 5, Ch. 259, L. 1955; amd. Sec. 87, Ch. 253, L. 1974.

substituted "provided in this section" at the end of the first sentence for "hereinafter provided"; deleted "or to the judge thereof" in the second sentence before "a complaint"; and made minor changes in punctuation and phraseology.

#### **Amendments**

The 1974 amendment substituted "board" throughout the section for "commission";

### **CHAPTER 9—ABANDONED OIL AND GAS WELLS**

#### **Section**

60-901. Notice required to surface owner—option of having pipe buried.

#### **60-901. Notice required to surface owner—option of having pipe buried.**

No person shall plug and abandon an oil or gas well located within this state without first giving reasonable notice of his intention to do so to the surface owner of record of the land on which said well is located. Upon receipt of notice to plug and abandon, the surface owner may by written notice given within fifteen (15) days thereafter direct that the well pipe for said well shall be buried to a depth of not less than three (3) feet. The board of oil and gas conservation shall adopt regulations to implement this act.

**History:** En. 60-901 by Sec. 1, Ch. 161, L. 1974.

owner prior to plugging and abandoning oil or gas wells and providing the option to surface owner of having the well pipe buried.

#### **Title of Act**

An act to require notice to surface



## TITLE 61—PARENT AND CHILD

### Chapter

1. Parent and child—children by birth and by adoption, 61-112.2.
2. Adoption, 61-203, 61-213.

### CHAPTER 1—PARENT AND CHILD—CHILDREN BY BIRTH AND BY ADOPTION

#### Section

61-112.2. Limitation on amount of recovery.

**61-112.2. Limitation on amount of recovery.** The recovery shall be limited to the actual damages in an amount not to exceed three hundred dollars (\$300.00) in addition to taxable court costs, and a reasonable attorney's fee to be set by the court, not to exceed one hundred dollars (\$100). The right to recover attorney fees as provided by this section shall be limited to a person bringing an action under section 61-112.1, R. C. M., 1947.

**History:** En. Sec. 2, Ch. 195, L. 1957;  
amd. Sec. 1, Ch. 178, L. 1971.

#### Amendments

The 1971 amendment added the provision for an attorney's fee, including the second sentence.

### CHAPTER 2—ADOPTION

#### Section

61-203. Who may adopt.

61-213. Confidential nature of record and proceedings.

**61-203. Who may adopt.** The following persons are eligible to adopt a child:

(1) A husband and wife jointly, or either the husband or wife if the other spouse is a parent of the child.

(2) An unmarried person who is at least eighteen (18) years old.

(3) A married person at least eighteen (18) years old who is legally separated from the other spouse.

(4) In the case of an illegitimate child, its unmarried father or mother.

**History:** En. Sec. 3, Ch. 240, L. 1957;  
amd. Sec. 15, Ch. 240, L. 1971; amd. Sec.  
22, Ch. 94, L. 1973.

specified in subdivisions (2) and (3) from 21 to 19 years.

The 1973 amendment reduced the age specified in subdivisions (2) and (3) from 19 to 18 years.

#### Amendments

The 1971 amendment reduced the age

**61-205. Persons required to consent to the adoption.**

#### Compiler's Notes

Section 48, Ch. 121, Laws 1974, substituted "state department of social and re-

habilitation services" throughout this section for "state department of public welfare."



**Noncompliance**

Mother, after executing affidavit of waiver and consent to adoption, could not effectively revoke that consent by letter addressed to county department of pub-

lic welfare, without following the procedure prescribed by this section. Application of Hendrickson, 159 M 217, 496 P 2d 1115.

**61-208, 61-209.****Compiler's Notes**

Section 48, Ch. 121, Laws 1974, substituted "state department of social and re-

habilitation services" in these sections for "state department of public welfare."

**61-211. Interlocutory and final decree.****Compiler's Notes**

Section 48, Ch. 121, Laws 1974, substituted "state department of social and re-

habilitation services "throughout this section for "state department of public welfare."

**61-213. Confidential nature of record and proceedings. (1) and (2)**

\* \* \* [Same as parent volume.]

(3) All files and records pertaining to said adoption proceedings in the county departments of public welfare, the state department of social and rehabilitation services or any authorized agencies shall be confidential and withheld from inspection except upon order of court for good cause shown.

History: En. Sec. 13, Ch. 240, L. 1957; amd. Sec. 18, Ch. 121, L. 1974.

departments of public welfare, the state department of social and rehabilitation services" for "county and state departments of public welfare" in subsection (3).

**Amendments**

The 1974 amendment substituted "county

## TITLE 62—PARKS AND PUBLIC RECREATION

### Chapter

1. County parks and recreational areas, 62-102.
3. State parks, 62-304, 62-307.
5. Horse racing, 62-502 to 62-511, 62-514, 62-515.
7. Card Games Act—bingo and raffles law—sports pools, 62-701 to 62-736.

### CHAPTER 1—COUNTY PARKS AND RECREATIONAL AREAS

#### Section

62-102. Use of land—limitation of expenditures.

**62-102. (4444.2) Use of land—limitation of expenditures.** All tracts of land acquired under this act shall be set aside and used exclusively for public camping and recreational purposes, and each park so established shall be given an appropriate name or number. Except as otherwise provided by law, there are no restrictions on expenditures for the purpose of acquiring, maintaining and equipping county parks.

**History:** En. Sec. 2, Ch. 51, L. 1929; amd. Sec. 1, Ch. 137, L. 1935; amd. Sec. 1, Ch. 129, L. 1943; amd. Sec. 1, Ch. 115, L. 1945; amd. Sec. 1, Ch. 229, L. 1959; amd. Sec. 1, Ch. 75, L. 1974.

general fund of the county for the purpose of maintaining parks as herein provided"; and inserted "maintaining" after "acquiring" near the end of the section.

#### Effective Date

Section 2 of Ch. 75, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 4, 1974.

#### Amendments.

The 1974 amendment deleted a second sentence reading "No county shall be authorized to expend to exceed five thousand dollars (\$5,000.00) per annum out of the

### CHAPTER 2—CITY, TOWN AND SCHOOL DISTRICT CIVIC CENTERS, PARKS AND RECREATIONAL FACILITIES

#### 62-205. (5163) Funds—how disbursed.

##### Indirect Costs

City has general budgetary authority in financing construction of city shop complex and has implied power to allocate proportionate share of costs among

various city departments using the facility, including the park department. *Greener v. City of Great Falls*, 157 M 376, 485 P 2d 932.

### CHAPTER 3—STATE PARKS

#### Section

- 62-304. Powers and duties.  
62-307. Connecting roads.

**62-304. Powers and duties.** The commission shall make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state, and may by purchase, lease, agreement, acceptance of donations, or condemnation acquire for the state any areas, sites, or objects which in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state historical sites. The commission may in its discretion accept in the name of the

state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state. It may in its discretion accept gifts, grants, bequests, or contributions of money or other property to be spent or used for any of the purposes of sections 62-301 through 62-308. A contract may not be entered into or other obligation incurred until moneys have been appropriated by the legislature or are otherwise available. The commission also has jurisdiction, custody, and control of all state parks, recreational areas, public camping grounds, historical sites, and monuments, except wayside camps and other public conveniences acquired, improved, and maintained by the department of highways and contiguous to the state highway system. The commission may designate lands under its control as state parks, state historical sites, state monuments, or by any other designation it considers appropriate, remove or change the designation of any area or portion, and name or change the name of any area as designated. The commission may lease those portions of designated lands which are necessary for the proper administration of these lands in keeping with the basic purpose of sections 62-301 through 62-308.

**History:** En. Sec. 4, Ch. 48, L. 1939; amd. Sec. 1, Ch. 46, L. 1955; amd. Sec. 2, Ch. 69, L. 1965; amd. Sec. 1, Ch. 135, L. 1969; amd. Sec. 49, Ch. 511, L. 1973.

**Amendments**

The 1973 amendment substituted "sec-

tions 62-301 through 62-308" for "this act" at the end of the third sentence; substituted "department of highways" for "state highway system" at the end of the fourth sentence; and made minor changes in style, phraseology and punctuation.

**62-307. Connecting roads.** The department of highways may construct, improve, and maintain with state highway funds connecting roads between existing state highways and state parks. Each road shall not exceed a total length of ten (10) miles.

**History:** En. Sec. 7, Ch. 48, L. 1939; amd. Sec. 2, Ch. 178, L. 1953; amd. Sec. 3, Ch. 69, L. 1965; amd. Sec. 50, Ch. 511, L. 1973.

**Amendments**

The 1973 amendment substituted "department of highways" for "state highway commission" at the beginning of the first sentence; and made minor changes in style, phraseology and punctuation.

**62-309. Repealed.**

**Repeal**

Section 62-309 (Sec. 9, Ch. 48, L. 1939), relating to reports of the state fish and

game commission, was repealed by Sec. 58, Ch. 511, Laws 1973.

CHAPTER 4—DEVELOPMENT OF OUTDOOR RECREATIONAL RESOURCES

**62-404. Repealed.**

**Repeal**

Section 62-404 (Sec. 4, Ch. 235, L. 1965), relating to the outdoor recreation

advisory and planning committee, was repealed by Sec. 58, Ch. 511, Laws 1973.

CHAPTER 5—HORSE RACING

**Section**

- 62-501. [Transferred.]
- 62-502. Definitions.
- 62-503. Chairman—quorum—costs.
- 62-504. Department's report—public record.
- 62-505. Duties of board, department, and licensees—license fee.
- 62-506. Authority of board.



- 62-507. License—application therefor—type and number of races—fee per day—refund—cancellation—hearing.
- 62-508. Penalty for violations of law—power of board.
- 62-509. Race exclusively for Montana bred horses—bonus for winner.
- 62-510. Public liability insurance.
- 62-511. Parimutuel betting—other betting illegal.
- 62-514. Gross receipts—department's percentage—collection and allocation.
- 62-515. Deposit of unclaimed money.

## 62-501. [Transferred.]

### Compiler's Notes

Section 12, Ch. 350, Laws of 1974 re-numbered this section as sec. 82A-1602.13.

**62-502. Definitions.** Unless the context requires otherwise in this chapter:

(1) "Board" means the board of horse racing, provided for in section 82A-1602.13.

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

(3) "Persons" means individuals, firms, corporations and associations.

(4) "Race meet" means an exhibition of thoroughbred, purebred, or registered horse racing where the parimutuel system of wagering is used.

**History:** En. Sec. 2, Ch. 196, L. 1965; amd. Sec. 13, Ch. 350, L. 1974.

### Amendments

The 1974 amendment inserted the first two definitions; deleted the former definition of "commission"; deleted from the end of the last definition a sentence read-

ing "Singular shall include the plural and plural shall include the singular; and words importing one gender shall be regarded as including all other genders"; renumbered the definitions; and made minor changes in phraseology. For prior version, see parent volume.

**62-503. Chairman—quorum—costs.** (1) The board shall organize by electing one (1) of its members chairman. Three (3) members of the board shall constitute a quorum for the transaction of business by the board.

(2) The board may incur all costs, charges and expenses reasonably necessary to carry out this act.

(3) Each member may be paid twenty-five dollars (\$25) for each day in which he is actually and necessarily engaged in the performance of board duties, and shall also be reimbursed for actual and necessary expenses incurred in his official service.

**History:** En. Sec. 3, Ch. 196, L. 1965; amd. Sec. 1, Ch. 213, L. 1973; amd. Sec. 2, Ch. 457, L. 1973; amd. Sec. 14, Ch. 350, L. 1974.

### Compiler's Notes

This section was amended twice in 1973, once by Ch. 213 and once by Ch. 457. Neither amendatory act mentioned nor entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

### Amendments

Chapter 213, Laws of 1973, substituted

"board" for "commission" throughout the section; and added the third paragraph.

Chapter 457, Laws of 1973, substituted "board" for "commission" throughout the section; increased the number of members constituting a quorum from two to three; and made minor changes in style.

The 1974 amendment inserted the subsection designations; and made minor changes in phraseology.

### Effective Date

Section 2 of Ch. 213, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

**62-504. Department's report—public record.** (1) The department shall keep detailed records of board meetings and of the business transacted at the meeting, and licenses applied for and issued.

(2) Records of the board kept by the department are public records, subject to public inspection.

**History:** En. Sec. 4, Ch. 196, L. 1965; amd. Sec. 17, Ch. 93, L. 1969; amd. Sec. 15, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment inserted the subsection designations; substituted "depart-

ment" throughout the section for "commission"; deleted "The commission shall report as provided in section 82-4002" at the end of subsection (1); inserted "kept by the department" in subsection (2); and made minor changes in phraseology.

**62-505. Duties of board, department, and licensees—license fee.** The board shall adopt rules to govern race meets and the parimutuel system. These rules shall include the following: definitions, auditing, and supervision of the parimutuel system, corrupt practices, supervision, duties and responsibilities of the presiding steward, racing secretary and other racing officials, licensing of all personnel who have anything to do with the substantive operation of racing, the establishment of dates for race meets and meetings in the best interest of breeding and racing in this state, and the veterinary practices and standards which must be observed in connection with race meets. A person who participates in a race meet shall be licensed and charged an annual fee not to exceed ten dollars (\$10), which shall be paid to the department and used for expenses of the board, subject to section 82A-1603(6). Each person holding a license under this chapter, and every owner, trainer, jockey, and attendant at a race course in this state, shall comply with this chapter and with the rules adopted and orders issued by the board.

**History:** En. Sec. 5, Ch. 196, L. 1965; amd. Sec. 1, Ch. 216, L. 1967; amd. Sec. 16, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "board" at the beginning of the section for "commission"; deleted "and regulations" after "rules" throughout the section; deleted a former third sentence reading "Rules pertaining to medication, testing of horses, examining horses prior to racing, and ban-

ning horses from running shall meet the approval of an advisory committee of the Montana veterinary medical association"; substituted "department" and "board" in the present third sentence for "commission"; added "subject to section 82A-1603(6)" to the end of the third sentence; substituted "chapter" in two places in the last sentence for "act"; substituted "board" at the end of the last sentence for "commission"; and made minor changes in phraseology.

**62-506. Authority of board.** The board shall, subject to sections 82A-1603 and 82A-1604, license, regulate, and supervise all race meets held in this state under this chapter and shall have the places where race meets are held visited and inspected at least once a year.

**History:** En. Sec. 6, Ch. 196, L. 1965; amd. Sec. 17, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "board"

for "commission created by this act"; inserted "subject to sections 82A-1603 and 82A-1604"; substituted "chapter" for "act"; and made minor changes in phraseology.

**62-507. License—application therefor—type and number of races—fee per day—refund—cancellation—hearing.** (1) It is unlawful for a person to hold a race meet in this state without a valid license issued by the de-

partment under this chapter. A person applying for a license to hold a race meet, under this chapter, shall file an application with the department which shall set forth the time, place, and number of days the license will continue, and other information the board requires.

(2) A person who has been convicted of a crime involving moral turpitude may not be issued a license of any kind, nor may a license be issued to a person who has violated this chapter or the rules of the board, or who has failed to pay the fees, taxes, or moneys required under this chapter.

(3) Applications to hold race meets shall be submitted to the department, and the board shall act on the applications within thirty (30) days. The board is the sole judge of whether the race meet may be licensed and the number of days the meet may continue.

(4) The board shall require that a fair board conducting race meets in conjunction with its regularly scheduled fair shall meet the requirements of the rules adopted by the board before granting a license. An unexpired license held by a person who violates this chapter, or who fails to pay to the department the sums required under this chapter, is subject to cancellation and revocation by the board.

**History:** En. Sec. 7, Ch. 196, L. 1965; amd. Sec. 2, Ch. 216, L. 1967; amd. Sec. 18, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "department" and "board" throughout the section for "commission" and "racing commission"; substituted "chapter" throughout the section for "act"; deleted "and regulations" throughout the section after "rules"; substituted "fair board" near the beginning of subsection (4) for "fairs"; deleted

from the end of subsection (4) a sentence reading "Such cancellation shall be made only after a summary hearing before the commission, of which three (3) days' notice, in writing, shall be given the licensee, specifying the grounds for the proposed cancellation, and at which hearing the licensee shall be given an opportunity to be heard in opposition to the proposed cancellation"; inserted the subsection designations; and made minor changes in punctuation and phraseology.

**62-508. Penalty for violations of law—power of board.** (1) A person holding a race meet, and an owner, trainer, or jockey participating in a race meet, without first being licensed under this chapter, and a person violating this chapter is guilty of a misdemeanor.

(2) The board may exclude from race courses in this state a person who the board considers detrimental to the best interest of racing.

(3) The board may suspend or revoke any license issued by the department to a person or assess a fine, not to exceed five hundred dollars (\$500), against a person who violates any of the provisions of this chapter or any rule, regulation or order of the board.

(4) The board shall promulgate regulations implementing this chapter, including the right to a hearing for individuals against whom action is taken or proposed herein.

It is lawful to conduct race meets at a race track or otherwise, at any time during the week.

**History:** En. Sec. 8, Ch. 196, L. 1965; amd. Sec. 1, Ch. 183, L. 1974; amd. Sec. 19, Ch. 350, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 183, and once by Ch. 350.

Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.



**Amendments**

Chapter 183, Laws of 1974, substituted "board" for "commission" throughout the section; deleted "willfully" in subsection (1) before "violating"; deleted "or any person who willfully violates any of the provisions of this act or any rule, regulation, or order of the commission" at the end of subsection (2); inserted subsection (3) and the first paragraph of subsection (4); and made minor changes in style, punctuation and phraseology.

Chapter 350, Laws of 1974, substituted "under this chapter" in subsection (1) for "by the commission"; substituted "chapter" for "act" near the end of subsection (1); substituted "board" for "commission" throughout subsection (2); and made minor changes in style and phraseology.

**Effective Date**

Section 2 of Ch. 183, Laws of 1974 provided the act should be in effect from and after its passage and approval. Approved March 12, 1974.

**62-509. Race exclusively for Montana bred horses—bonus for winner.**

(1) For the purpose of encouraging the breeding, in this state, of valuable thoroughbred, purebred, quarter horse, appaloosa, or registered horses, at least one (1) race each day at each race meet shall be limited to horses bred in this state. If, in the opinion of the board sufficient competition cannot be had among this class of horses, the race may be eliminated for the day and a substitute race provided instead.

(2) A sum equal to ten per cent (10%) of the first money of every purse won by a horse bred in this state shall be paid by the licensee conducting the race meet to the breeder of the horse.

**History:** En. Sec. 9, Ch. 196, L. 1965; amd. Sec. 20, Ch. 350, L. 1974.

in subsection (1) for "commission"; and made minor changes in style, punctuation and phraseology.

**Amendments**

The 1974 amendment substituted "board"

**62-510. Public liability insurance.** For the protection of the public, and all members thereof, the exhibitors, and visitors, a person licensed to conduct a race meet under this chapter shall carry public liability insurance in an amount and form of contract to be approved by the board.

**History:** En. Sec. 10, Ch. 196, L. 1965; amd. Sec. 3, Ch. 216, L. 1967; amd. Sec. 21, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "chapter" for "act"; substituted "board" for "commission"; and made minor changes in punctuation and phraseology.

**62-511. Parimutuel betting—other betting illegal.** (1) It is unlawful to make, report, record, or register a bet or wager on the result of a contest of speed, skill, or endurance of an animal, whether the contest is held within or outside of this state, except under this chapter.

(2) A licensee conducting a race meet under this chapter may provide a place in the race meet grounds or enclosure where the licensee may conduct or supervise the use of the parimutuel system by patrons on the result of the races conducted by the licensee at the race meet, if the parimutuel system is conducted under this chapter and the rules of the board.

(3) It is unlawful to conduct pool selling, bookmaking, or to circulate handbooks, or to bet or wager on a race of a licensed race meet, other than by the parimutuel system, and in the race meet grounds or enclosure where the race is held, or to permit a minor to use the parimutuel system.

**History:** En. Sec. 11, Ch. 196, L. 1965; amd. Sec. 4, Ch. 216, L. 1967; amd. Sec. 22, Ch. 350, L. 1974.

#### **Amendments**

The 1974 amendment substituted "chap-

ter" for "act" throughout the section; substituted "board" for "commission" throughout the section; and made numerous changes in style, punctuation and phraseology.

**62-514. Gross receipts—department's percentage—collection and allocation.** The licensee shall pay to the department one per cent (1%) of the gross receipts of each day's parimutuel betting at each race meet, which sums shall be paid to the department within five (5) days after receipt by the licensee. At the end of each race meet the licensee shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments the balance shall be paid to the department. Money paid to the department may be used for the expenses incurred in carrying out this chapter.

**History:** En. Sec. 14, Ch. 196, L. 1965; amd. Sec. 5, Ch. 216, L. 1967; amd. Sec. 23, Ch. 350, L. 1974.

#### **Amendments**

The 1974 amendment substituted "department" throughout the section for "com-

mission"; substituted "chapter" at the end of the last sentence for "act"; deleted "No expenditure shall be made until the commission has audited and approved the claim" at the end of the section; and made minor changes in phraseology.

**62-515. Deposit of unclaimed money.** Each licensee holding a horse race meeting shall within thirty (30) days of the end of the meeting pay to the department of professional and occupational licensing for deposit in the earmarked revenue fund for the board of horse racing all unclaimed winning ticket money from any parimutuel pool.

**History:** En. 62-515 by Sec. 1, Ch. 199, L. 1974.

#### **Title of Act**

An act to require licensees conducting horse race meetings to pay to the department of professional and occupational licensing for deposit in the earmarked revenue fund of the board of horse racing

all unclaimed winning ticket money within thirty (30) days of the close of the meeting; and providing for an effective date.

#### **Effective Date**

Section 2 of Ch. 199, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 12, 1974.

### **CHAPTER 7—CARD GAMES ACT—BINGO AND RAFFLES LAW—SPORTS POOLS**

#### **Section**

- 62-701. Short title.
- 62-702. Definitions.
- 62-703. Unauthorized card games prohibited.
- 62-704. Prizes not to exceed one hundred dollars (\$100).
- 62-705. Rules of play to be posted—rake-off approved.
- 62-706. Gambling on cash basis.
- 62-707. Local governing bodies may issue licenses.
- 62-708. Governing body may establish regulations.
- 62-709. Minors may not participate.
- 62-710. Cheating unlawful.
- 62-711. Peace officers to enforce act.
- 62-712. Penalty for violation of act.
- 62-713. Venue.
- 62-714. Prior laws still in effect.
- 62-715. Short title.
- 62-716. Definitions.

- 62-717. Restrictions on bingo and raffles.
- 62-718. No raffle drawing before thirty (30) days or after ninety (90) days.
- 62-719. Local governing bodies may issue licenses.
- 62-720. Governing body may establish regulations.
- 62-721. Minors not to participate.
- 62-722. Peace officers to enforce act.
- 62-723. Penalty for violation of act.
- 62-724. Gambling on cash basis.
- 62-725. Cheating unlawful.
- 62-726. Bingo and raffles exempt from prior law.
- 62-727. Sports pools defined—rules.
- 62-728. Transportation exempt from federal law.
- 62-729. Gambling on cash basis.
- 62-730. Minors may not participate.
- 62-731. Cheating unlawful.
- 62-732. Peace officers to enforce act.
- 62-733. Penalty for violation of act.
- 62-734. Prior law still in effect.
- 62-735. Venue.
- 62-736. Severability.

**62-701. Short title.** This act may be cited as the “Montana Card Games Act.”

**History:** En. 62-701 by Sec. 1, Ch. 293, defining terms; permitting local licensing and regulation; providing penalties and providing an effective date.  
L. 1974.

**Title of Act**

An act legalizing certain card games;

**62-702. Definitions.** As used in this act and unless the context otherwise requires, the following terms or phrases have the following meanings:

(1) “Authorized card game” means any card game permitted by this act.

(2) “Card game” means any game played with cards for which the prize is money or any item of value.

**History:** En. 62-702 by Sec. 2, Ch. 293,  
L. 1974.

**62-703. Unauthorized card games prohibited.** (1) It is unlawful for any person to conduct or participate in any card game or make any tables available for the playing of card games except those card games authorized by this act.

(2) The card games authorized by this act are and are limited to the card games known as bridge, cribbage, hearts, panguingue, pinochle, pitch, rummy, whist, solo, and poker.

**History:** En. 62-703 by Sec. 3, Ch. 293,  
L. 1974.

**62-704. Prizes not to exceed one hundred dollars (\$100).** No prize for any individual game shall exceed the value of one hundred dollars (\$100). Games shall not be combined in any manner so as to increase the value of the ultimate prize awarded.

**History:** En. 62-704 by Sec. 4, Ch. 293,  
L. 1974.

**62-705. Rules of play to be posted—rake-off approved.** Rules governing the conduct of each game shall be prominently posted on the premises



of any licensed establishment where such game is conducted. Such rules shall include notice of the maximum percentage rake-off if any, and shall require that the person taking the rake-off do so in an obvious manner and only after announcing the amount of each rake-off, which shall only be taken at the conclusion of each game when the winner of each individual pot has been determined.

History: En. 62-705 by Sec. 5, Ch. 293,  
L. 1974.

**62-706. Gambling on cash basis.** (1) In every gambling game conducted pursuant to any gambling law of the state the consideration paid for the chance to play shall be strictly cash. Every participant must present the money with which he intends to play the gambling game at the time the game is played. No check, credit card, note, I.O.U. or other evidence of indebtedness shall be offered or accepted as part of the price of participating in a gambling game or as payment of a gambling debt.

(2) No action based on a gambling debt is maintainable in a court of this state.

History: En. 62-706 by Sec. 6, Ch. 293,  
L. 1974.

**62-707. Local governing bodies may issue licenses.** (1) Any city, town or county may issue licenses for the gambling games provided for in this act to be conducted on premises which have been licensed for the sale of liquor, beer, food, cigarettes or any other consumable products. Within the cities or towns, such licenses may be issued by the city or town council or commission. Licenses for games conducted on premises outside the limits of any city or town may be issued by the county commissioners of the respective counties. When a license has been required by any city, town or county, no gambling game as provided for in this act shall be conducted on any premises which have been licensed for the sale of liquor, beer, food, cigarettes or any other consumable product without such license having first been obtained.

(2) Any governing body may charge an annual license fee for each license so issued under this act, which license fee, if any, shall expire on June 30 of each year, and such fee shall be prorated.

(3) Any license issued pursuant to this act shall be deemed to be a revocable privilege, and no holder thereof shall acquire any vested rights therein or thereunder.

History: En. 62-707 by Sec. 7, Ch. 293,  
L. 1974.

**62-708. Governing body may establish regulations.** The governing body authorized to issue gambling licenses pursuant to this act shall have the authority to establish by ordinance or resolution, regulations governing the qualifications for and the issuing, suspension and revocation of such gambling licenses. These regulations, in addition to any other requirements, shall provide that no license shall be issued to:

1. A person who has been convicted of being the keeper or is keeping a house of ill fame.

2. A person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality, under the laws of the federal government or any state of the United States.

3. A person whose license issued under this act has been revoked for cause.

4. A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application.

5. A person who is not a citizen of the United States and who has not been a resident of the state of Montana for at least one (1) year immediately preceding the filing of the application for license.

6. A person who is not the owner and operator of the business. Additional regulations may also be adopted for the purpose of the protection of the public health, welfare and safety of the citizens of the state of Montana and to assure compliance with the intent of this act.

History: En. 62-708 by Sec. 8, Ch. 293,  
L. 1974.

**62-709. Minors may not participate.** No person under the age of eighteen (18) years shall be permitted to participate in any game or games of chance held, operated or conducted pursuant to this act.

History: En. 62-709 by Sec. 9, Ch. 293,  
L. 1974.

**62-710. Cheating unlawful.** It shall be unlawful to conduct or participate in a gambling game authorized by this act or any other gambling law in any manner which results in cheating, misrepresentation or other such disreputable tactics which distract from a fair and equal chance for all participants or which otherwise affects the outcome of the gambling game.

History: En. 62-710 by Sec. 10, Ch. 293,  
L. 1974.

**62-711. Peace officers to enforce act.** It shall be the duty of all peace officers to enforce the provisions of this act and to arrest and complain against any person violating any provision of this act. It shall be the duty of the county attorney of the respective county to prosecute all violations of this act in the manner and form as is provided by law and it shall be a misdemeanor for any such person or persons to knowingly fail to perform his or her duty under this section.

History: En. 62-711 by Sec. 11, Ch. 293,  
L. 1974.

**62-712. Penalty for violation of act.** Every person who willfully violates or who procures, aids or abets in the willful violation of this act or any ordinance, resolution or regulation adopted pursuant thereto shall be deemed guilty of a misdemeanor and upon conviction, shall be punished by a fine of not more than one thousand dollars (\$1,000) or imprisonment in the county jail for not more than three (3) months, or both.

History: En. 62-712 by Sec. 12, Ch. 293,  
L. 1974.

**62-713. Venue.** Venue for all cases involving violations of this act is in the district court.

History: En. 62-713 by Sec. 13, Ch. 293, L. 1974.

**62-714. Prior laws still in effect.** To the extent that they are not specifically superseded by provisions of this act or any other gambling law, the provisions of sections 94-8-401 through 94-8-431, R. C. M. 1947, remain in effect.

History: En. 62-714 by Sec. 14, Ch. 293, L. 1974.

#### Separability Clause

Section 15 of Ch. 293, Laws 1974 read "If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect with-

out the invalid provision or application, and to this end the provisions of this act are declared to be severable."

#### Effective Date

Section 16 of Ch. 293, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 25, 1974.

**62-715. Short title.** This act shall be known and may be cited and referred to as the "Bingo and Raffles Law."

History: En. 62-715 by Sec. 1, Ch. 294, L. 1974.

#### Title of Act

An act making lawful the conducting of

games of chance commonly known as bingo and raffles; defining terms; permitting local licensing and regulation; providing penalties; and providing an effective date.

**62-716. Definitions.** As used in this act, unless the context otherwise requires, the following terms or phrases shall have the following meanings:

(1) "Game of chance" means the specific kind of game of chance commonly known as:

(a) "bingo," in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random; and such prizes must be in tangible personal property only and not in money, cash, stocks, bonds, evidences of indebtedness, or other intangible personal property and must not exceed the value of one hundred dollars (\$100) for each individual bingo award. The price for an individual bingo card shall not exceed fifty cents (\$.50). It shall be unlawful to, in any manner, combine any awards so as to increase the ultimate value of such award;

(b) "raffles," which are conducted by drawing for prizes. Prizes must be in tangible personal property only and not in money, cash, stocks, bonds, evidences of indebtedness, or other intangible personal property and must not exceed the value of one thousand dollars (\$1,000) for each individual raffle card. It shall be unlawful to, in any manner, combine any awards so as to increase the ultimate value of such award.

(2) "Equipment" means:

(a) with respect to bingo, the receptacle and numbered objects drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them, the boards or signs, however



operated, used to announce or display the numbers or designations as they are drawn, public address system, and all other articles essential to the operation, conduct and playing of bingo ; or

(b) with respect to raffles, the implements, devices and machines designed, intended or used for the conduct of raffles and the identification of the winning number or unit and the ticket or other evidence of right to participate in raffles.

History: En. 62-716 by Sec. 2, Ch. 294,  
L. 1974.

**62-717. Restrictions on bingo and raffles.** In the playing of bingo, no person who is not physically present on the premises where the game is actually conducted shall be allowed to participate as a player in the game. Raffles authorized by this act shall be restricted to events and participants within the geographic confines of the state of Montana.

History: En. 62-717 by Sec. 3, Ch. 294,  
L. 1974.

**62-718. No raffle drawing before thirty (30) days or after ninety (90) days.** No raffle drawing may be held nor winner determined unless the chances to participate have been offered for sale for at least thirty (30) days prior to the drawing. The drawing shall take place no later than ninety (90) days after the first offering for sale of chances to participate.

History: En. 62-718 by Sec. 4, Ch. 294,  
L. 1974.

**62-719. Local governing bodies may issue licenses.** (1) Any city, town or county may issue licenses for the gambling games provided for in this act to be conducted on premises which have been licensed for the sale of liquor, beer, food, cigarettes or any other consumable products. Within the cities or towns, such licenses may be issued by the city or town council or commission. Licenses for games conducted on premises outside the limits of any city or town may be issued by the county commissioners of the respective counties. When a license has been required by any city, town or county, no gambling game as provided for in this act shall be conducted on any premises which have been licensed for the sale of liquor, beer, food, cigarettes or any other consumable product without such license having first been obtained.

(2) Any governing body may charge an annual license fee for each license so issued under this act, which license fee, if any shall expire on June 30 of each year, and such fee shall be prorated.

(3) Any license issued pursuant to this act shall be deemed to be a revocable privilege, and no holder thereof shall acquire any vested rights therein or thereunder.

History: En. 62-719 by Sec. 5, Ch. 294,  
L. 1974.

**62-720. Governing body may establish regulations.** The governing body authorized to issue gambling licenses pursuant to this act shall have the authority to establish by ordinance or resolution regulations governing

the qualifications for and the issuing, suspension and revocation of such gambling licenses. These regulations, in addition to any other requirements, shall provide that no license shall be issued to:

(1) A person who has been convicted of being the keeper or is keeping a house of ill fame.

(2) A person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality, under the laws of the federal government or any state of the United States.

(3) A person whose license issued under this act has been revoked for cause.

(4) A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application.

(5) A person who is not a citizen of the United States and who has not been a resident of the state of Montana for at least one (1) year immediately preceding the filing of the application for license.

(6) A person who is not the owner and operator of the business. Additional regulations may also be adopted for the purpose of the protection of the public health, welfare and safety of the citizens of the state of Montana and to assure compliance with the intent of this act.

History: En. 62-720 by Sec. 6, Ch. 294,  
L. 1974.

**62-721. Minors not to participate.** No person under the age of eighteen (18) years shall be permitted to participate in any game or games of chance held, operated or conducted pursuant to this act.

History: En. 62-721 by Sec. 7, Ch. 294,  
L. 1974.

**62-722. Peace officers to enforce act.** It shall be the duty of all peace officers to enforce the provisions of this act and to arrest and complain against any person violating any provision of this act. It shall be the duty of the county attorney of the respective county to prosecute all violations of this act in the manner and form as is provided by law and it shall be a misdemeanor for any such person or persons to knowingly fail to perform his or her duty under this section.

History: En. 62-722 by Sec. 8, Ch. 294,  
L. 1974.

**62-723. Penalty for violation of act.** Every person who willfully violates or who procures, aids or abets in the willful violation of this act or any ordinance, resolution or regulation adopted pursuant thereto shall be deemed guilty of a misdemeanor and upon conviction, shall be punished by a fine of not more than one thousand dollars (\$1,000) or imprisonment in the county jail for not more than three (3) months, or both.

History: En. 62-723 by Sec. 9, Ch. 294,  
L. 1974.

**62-724. Gambling on cash basis.** (1) In every gambling game conducted pursuant to any gambling law of the state the consideration paid

for the chance to play shall be strictly cash. Every participant must present the money with which he intends to play the gambling game at the time the game is played. No check, credit card, note, I.O.U. or other evidence of indebtedness shall be offered or accepted as part of the price of participation in a gambling game or as payment of a gambling debt.

(2) No action based on a gambling debt is maintainable in a court of this state.

**History:** En. 62-724 by Sec. 10, Ch. 294,  
L. 1974.

**62-725. Cheating unlawful.** It shall be unlawful to conduct or participate in a gambling game authorized by this act or any other gambling law in any manner which results in cheating, misrepresentation or other such disreputable tactics which distract from a fair and equal chance for all participants or which otherwise affects the outcome of the gambling game.

**History:** En. 62-725 by Sec. 11, Ch. 294,  
L. 1974.

**62-726. Bingo and raffles exempt from prior law.** Bingo and raffles as in this act authorized are exempt from the provisions of sections 94-8-301 through 94-8-311, R. C. M. 1947.

**History:** En. 62-726 by Sec. 12, Ch. 294,  
L. 1974.

remains in effect in all valid applications that are severable from the invalid applications."

**Separability Clause**

Section 13 of Ch. 294, Laws 1974 read "It is the intent of the legislature that if a part of this act is invalid, all valid parts severable from the invalid parts remain in effect. If a part of this act is invalid in one or more of its applications, the part

**Effective Date**

Section 14 of Ch. 294, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 25, 1974.

**62-727. Sports pools defined—rules.** "Sports pools" means a card divided into squares or spaces with the names of the participants in the pool written within such squares or spaces, for which consideration in money is paid by the person playing for each square or space for the chance to win money or other items of value on any sports event wherein the participants in such sports event are natural persons or animals. The card used for recording the pool and upon which the squares or spaces appear shall clearly state in advance of the sale of any chances the number of chances to be sold in that specific pool, the name of the event, the consideration to be paid for each chance and the total amount to be paid to the winners.

No chance to participate in a sports pool may be sold other than upon the premises in which the sports pool is conducted. No individual chance to participate in a sports pool shall be sold for a consideration in excess of one dollar (\$1) and the total amount to be paid to the winners of any individual sports pool shall not exceed the value of one hundred dollars (\$100). The winner of any sports pool shall receive a one hundred per cent (100%) payout of the value of the sports pool.



History: En. 62-727 by Sec. 1, Ch. 290,  
L. 1974.

Title of Act

An act legalizing sports pools; providing penalties; and providing an effective date.

**62-728. Transportation exempt from federal law.** The transportation of sports pool cards is hereby declared exempt from the provisions of 15 U.S.C. 1172.

History: En. 62-728 by Sec. 2, Ch. 290,  
L. 1974.

**62-729. Gambling on cash basis.** (1) In every gambling game conducted pursuant to any gambling law of the state the consideration paid for the chance to play shall be strictly cash. Every participant must present the money with which he intends to play the gambling game at the time the game is played. No check, credit card, note, I.O.U. or other evidence of indebtedness shall be offered or accepted as part of the price of participating in a gambling game or as payment of a gambling debt.

(2) No action based on a gambling debt is maintainable in a court of this state.

History: En. 62-729 by Sec. 3, Ch. 290,  
L. 1974.

**62-730. Minors may not participate.** No person under the age of eighteen (18) years shall be permitted to participate in any game or games of chance held, operated or conducted pursuant to this act.

History: En. 62-730 by Sec. 4, Ch. 290,  
L. 1974.

**62-731. Cheating unlawful.** It shall be unlawful to conduct or participate in a gambling game authorized by this act or any other gambling law in any manner which results in cheating, misrepresentation or other such disreputable tactics which distract from a fair and equal chance for all participants or which otherwise affects the outcome of the gambling game.

History: En. 62-731 by Sec. 5, Ch. 290,  
L. 1974.

**62-732. Peace officers to enforce act.** It shall be the duty of all peace officers to enforce the provisions of this act and to arrest and complain against any person violating any provision of this act. It shall be the duty of the county attorney of the respective county to prosecute all violations of this act in the manner and form as is provided by law and it shall be a misdemeanor for any such person or persons to knowingly fail to perform his or her duty under this section.

History: En. 62-732 by Sec. 6, Ch. 290,  
L. 1974.

**62-733. Penalty for violation of act.** Every person who willfully violates or who procures, aids or abets in the willful violation of this act, shall be deemed guilty of a misdemeanor and upon conviction, shall be punished

by a fine of not more than one thousand dollars (\$1,000) or imprisonment in the county jail for not more than three (3) months, or both.

History: En. 62-733 by Sec. 7, Ch. 290,  
L. 1974.

**62-734. Prior law still in effect.** To the extent that they are not specifically superseded by the provisions of this act or any other gambling law, the provisions of sections 94-8-401 through 94-8-431, R. C. M. 1947, remain in effect.

History: En. 62-734 by Sec. 8, Ch. 290,  
L. 1974.

**62-735. Venue.** Venue for all violations of this act is in the district court.

History: En. 62-735 by Sec. 9, Ch. 290,  
L. 1974.

**62-736. Severability.** If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

History: En. 62-736 by Sec. 10, Ch. 290,  
L. 1974. vided the act should be in effect from and after its passage and approval. Approved March 25, 1974.

**Effective Date**

Section 11 of Ch. 290, Laws 1974 pro-

## TITLE 63—PARTNERSHIP

### CHAPTER 5—GENERAL PARTNERSHIP—DISSOLUTION AND WINDING UP

#### 63-503. Causes of dissolution.

##### Sale of Partnership Property

Partnership was dissolved by sale of partnership property and articles did not control distribution of proceeds from that

sale upon subsequent death of one partner.  
Hansen v. Kiernan, 159 M 448, 499 P 2d 787.

### CHAPTER 7—SPECIAL PARTNERSHIP—FORMATION

#### 63-701. Limited partnership defined.

NOTE.—Uniform State Law. In addition to the states listed in the parent volume, the following states have adopted the

“Uniform Limited Partnership Act”:  
Kansas and Maine.





## TITLE 64—PERSONS AND PERSONAL RIGHTS

### Chapter

1. Persons, minors, adults and those of unsound mind, 64-101.
2. Personal rights—libel and slander—protection of personal relations, 64-207.1.
3. Freedom from discrimination, 64-301, 64-304 to 64-312.

### CHAPTER 1—PERSONS, MINORS, ADULTS AND THOSE OF UNSOUND MIND

#### Section

64-101. Minors and adults defined.

#### **64-101. (5673) Minors and adults defined. Minors are:**

1. Males under eighteen (18) years of age;
2. Females under eighteen (18) years of age. All other persons are adults.

**History:** En. Secs. 10-11, Civ. C. 1895; re-en Secs. 3584, 3586, Rev. C. 1907; re-en. Sec. 5673, R. C. M. 1921; amd. Sec. 16, Ch. 240, L. 1971; amd. Sec. 23, Ch. 94, L. 1973. Cal. Civ. C. Sec. 25. Field Civ. C. Sec. 11.

#### **Amendments**

The 1971 amendment changed the age of minority from 21 for males and 18 for females to 19 in both instances.

The 1973 amendment reduced the age of majority from 19 to 18 for both males and females.

### CHAPTER 2—PERSONAL RIGHTS—LIBEL AND SLANDER— PROTECTION OF PERSONAL RELATIONS

#### Section

64-207.1. Notice in writing to publisher of libelous or defamatory matter—opportunity to correct—defense and mitigation of damages.

#### **64-203. (5690) Libel defined.**

##### **Multi-Publication Rule**

Montana follows the multi-publication rule rather than the single publication rule in determining the situs and time of the tort in libel cases; under the multi-publication rule the cause of action arose upon

the arrival and sale of the allegedly libelous magazines in Montana rather than upon the first publication or printing in another state. *Lewis v. Reader's Digest Association, Inc.*, — M —, 512 P 2d 702.

**64-207.1. Notice in writing to publisher of libelous or defamatory matter—opportunity to correct—defense and mitigation of damages.** Before any civil action shall be commenced on account of any libelous or defamatory publication in any newspaper, magazine, periodical, radio or television station, or cable television system, the libeled person shall first give those alleged to be responsible or liable for the publication a reasonable opportunity to correct the libelous or defamatory matter. Such opportunity shall be given by notice in writing specifying the article and the statements therein which are claimed to be false and defamatory and a statement of what are claimed to be the true facts. The notice may also state the sources, if any, from which the true facts may be ascertained with definiteness and certainty. The first issue of a newspaper, magazine or periodical published after the expiration of one week from

the receipt of such notice shall be within a reasonable time for correction. In the case of radio and television stations and cable television systems a broadcast made at the same time of day as the broadcast complained of and of at least equal duration, which is made within seven (7) days following receipt of such notice shall be within a reasonable time for correction. To the extent that the true facts are, with reasonable diligence, ascertainable with definiteness and certainty, only a retraction shall constitute a correction; otherwise the publication of the libeled person's statement of the true facts, or so much thereof as shall not be libelous of another, scurrilous, or otherwise improper for publication, published as his statement, shall constitute a correction within the meaning of this section. If it shall appear upon trial that the publication was made under honest mistake or misapprehension, then a correction, timely published, without comment, in a position and type as prominent as the alleged libel, or in a broadcast made at the same time of day as the broadcast complained of and of at least equal duration, shall constitute a defense against the recovery of any damages except actual damages, as well as being competent and material in mitigation of actual damages to the extent the correction published does so mitigate them.

**History:** En. Sec. 1, Ch. 159, L. 1961; amd. Sec. 1, Ch. 58, L. 1971.

and fifth sentences; and made a minor change in punctuation.

#### Amendments

The 1971 amendment inserted references to cable television systems in the first

#### Repealing Clause

Section 2 of Ch. 58, Laws 1971 repealed all acts and parts of acts in conflict therewith.

### CHAPTER 3—FREEDOM FROM DISCRIMINATION

#### Section

- 64-301. Freedom from discrimination as civil right—employment—public accommodations.
- 64-304. Employment discrimination against handicapped prohibited.
- 64-305. Definitions.
- 64-306. Discriminatory practices described and prohibited.
- 64-307. Sex, age, physical or mental handicap, race, religion, color, origin no justification for discrimination.
- 64-308. Complaint—how filed—by whom.
- 64-309. Power of commission on finding of discrimination.
- 64-310. Injunction to enforce commission order.
- 64-311. Department may employ attorney.
- 64-312. Unlawful to violate act—penalty.

**64-301. Freedom from discrimination as civil right—employment—public accommodations.** The right to be free from discrimination because of race, creed, color, sex, physical handicap, or national origin is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(1) and (2) \* \* \* [Same as parent volume.]

**History:** En. Sec. 1, Ch. 201, L. 1965; amd. Sec. 1, Ch. 39, L. 1971; amd. Sec. 1, Ch. 77, L. 1974.

The 1974 amendment inserted "physical handicap" after "sex" near the beginning of the section.

#### Amendments

The 1971 amendment inserted "sex" in the introductory paragraph.



**64-302, 64-303. Repealed.****Repeal**

Sections 64-302 and 64-303 (Secs. 2, 3, Ch. 201, L. 1965; Sec. 2, Ch. 39, L. 1971; Sec. 2, Ch. 77, L. 1974), relating to free-

dom from discrimination and discrimination as a misdemeanor, were repealed by Sec. 10, Ch. 283, Laws of 1974.

**64-304. Employment discrimination against handicapped prohibited.**

It is unlawful to discriminate in the hiring or employment against a person because of the physical handicap of such person. There is no discrimination where the nature or extent of the handicap reasonably precludes the performance of the particular employment or where the particular employment may subject the handicapped or his fellow employees to physical harm. A person who practices discrimination in violation of this section commits a misdemeanor, and is also liable in a district court action for civil damages and attorney's fees by the person discriminated against. Should the person who allegedly practiced discrimination prevail in the civil action, he shall be entitled to recover reasonable attorney's fees from the person who alleged the discrimination.

**History:** En. Sec. 3, Ch. 77, L. 1974.

**Title of Act**

An act extending the antidiscrimination

statutes to prohibit discrimination against the physically handicapped; amending sections 64-301 and 64-302, R. C. M. 1947, and providing a penalty and a civil remedy.

**64-305. Definitions.** As used in this act, unless the context requires otherwise:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in section 82A-1015.

(3) "Department" means the department of labor and industry provided for in Title 82A, chapter 10.

(4) "Educational institution" means a public or private institution and includes an academy, college, elementary or secondary school, extension course, kindergarten, nursery, school system, university, a business, nursing, professional, secretarial, technical or vocational school or an agent of an educational institution.

(5) "Employee" means any individual employed by an employer.

(6) "Employer" means an employer of one (1) or more persons but does not include a fraternal, charitable, or religious association or corporation, if the association or corporation is not organized for private profit; or to provide accommodation or services that are available on a nonmembership basis.

(7) "Employment agency" means a person undertaking to procure employees or opportunities to work.

(8) "Financial institution" means a commercial bank, trust company, mutual savings bank, co-operative bank, homestead association, finance company, mutual savings and loan association or an insurance company.

(9) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, which is or will be used as the sleeping quarters of its occupants.

(10) "Labor organization" means an organization and an agent of the organization, organized for the purpose, in whole or in part, of collective bargaining, dealing with employers concerning grievances, terms of conditions of employment, or of other mutual aid protection of employees.

(11) "Mental handicap" means any mental disability resulting in subaverage intellectual functioning and impaired social competence.

(12) "National origin" means ancestry.

(13) "Person" means one (1) or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees, employers, employment agencies, or labor organizations.

(14) "Physical handicap" means any physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness, including epilepsy, and shall include without limitation any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog for the blind, wheelchair, or other remedial appliance or device.

(15) "Public accommodation" means a place which caters or offers its services, goods, or facilities to the general public including but not limited to a public inn, restaurant, eating house, hotel, roadhouse, place where food or spirituous or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, night club, trailer park, resort, campground, barbershop, beauty parlor, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, hospital, and all other public amusement and business establishments, subject only to the conditions and limitations established by law and applicable alike to all persons.

**History:** En. 64-305 by Sec. 1, Ch. 283, L. 1974.

#### **Title of Act**

An act to prevent discrimination in employment, public accommodations, education, and real property transactions; to

establish a commission on human rights; to authorize the creation of local commissions and to make uniform the law with reference thereto, and for other purposes; and repealing sections 64-302 and 64-303, R. C. M. 1947.

**64-306. Discriminatory practices described and prohibited.** (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, or to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, religion, color, or national origin or because of his age, physical or mental handicap or sex when the reasonable demands of the position do not require an age, physical or mental handicap or sex distinction;

(b) a labor organization, because of a person's sex, age, physical or mental handicap, race, religion, color, or national origin, to exclude or ex-

pel him from its membership, apprenticeship, or training program, or to discriminate in any way against a member of, or an applicant to the labor organization or an employer or an employee;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication, or to use a form of application for employment, which expresses, directly or indirectly, a limitation, specification or discrimination as to sex, age, physical or mental handicap, race, creed, color, or national origin, or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employer, labor organization or employment agency to discharge, expel, or otherwise discriminate against a person because he has opposed any practices forbidden under this act or because he has filed a complaint, testified, or assisted in a proceeding under this act.

The state, employers, labor organizations, and employment agencies shall maintain records on age, sex, and race that are required to administer the civil rights law and regulations. These records are confidential and available only to federal and state personnel legally charged with administering civil rights laws and regulations. However, statistical information compiled from records on age, sex, and race shall be made available to the general public.

(2) It is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation:

(a) to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, race, age, physical or mental handicap, religion, color, or national origin;

(b) to publish, circulate, issue, display, post or mail a written or printed communication, notice or advertisement which states or implies that any of the services, goods, facilities, advantages or privileges of the public accommodation will be refused, withheld from or denied to a person of a certain race, religion, sex, age, physical or mental handicap, color or national origin except when the distinction is based on reasonable grounds under rules adopted by the commission.

(3) It is an unlawful discriminatory practice for the owner, lessee, manager or other person having the right to sell, lease, or rent a housing accommodation or improved or unimproved property:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, race, religion, color, age, physical or mental handicap, or national origin, except when the distinction is based on reasonable grounds under rules adopted by the commission;

(b) to discriminate against a person because of sex, race, religion, age, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of a housing accommodation or improved or unimproved property, except when the distinction is based on reasonable grounds under rules adopted by the commission; or

(c) to make a written or oral inquiry or record of the sex, race, religion, age, physical or mental handicap, color, or national origin of a person



seeking to buy, lease, or rent a housing accommodation or improved or unimproved property, except when the distinction is based on reasonable grounds under rules adopted by the commission;

(d) a private residence designed for single family occupancy, in which sleeping space is rented to guests in the family home in which the landlord also resides, may be excluded from the provisions of this act.

(4) It is an unlawful discriminatory practice for a financial institution, upon receiving an application for financial assistance to permit an official or employee during the execution of his duties:

(a) to discriminate against the applicant because of sex, race, religion, age, physical or mental handicap, color, or national origin in a term, condition or privilege relating to the obtainment or use of the institution's financial assistance.

(5) It is an unlawful discriminatory practice for the state or any of its political subdivisions:

(a) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, religion, sex, color, age, physical or mental handicap, or national origin;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any local, state, or federal funds, services, goods, facilities, advantages, or privileges of the office or agency will be refused, withheld from, or denied to a person of a certain race, religion, sex, color, age, physical or mental handicap, or national origin or that the patronage of a person belonging to a particular race, creed, sex, color, or certain age or national origin or possessing a physical or mental handicap, is unwelcome, or not desired or solicited.

(c) to refuse employment to a person, or to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his political beliefs. However, this prohibition does not apply to policy-making positions on the immediate staff of an elected officer of the executive branch provided for in article VI, section 1, of the Montana constitution, nor to the appointment by the governor of a director of a principal department provided for in article VI, section 7, of the Montana constitution.

(6) It is an unlawful discriminatory practice for an educational institution:

(a) to exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, condition, and privileges of the institution because of race, color, age, physical handicap, or national origin or because of mental handicap unless based on reasonable grounds under rules adopted by the commission;

(b) to make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information, or to make or keep a record, concerning the race, color, religion, physical or mental

handicap, or national origin of an applicant for admission, except as permitted by regulations of the commission;

(c) to print, publish, or cause to be printed or published a catalog or other notice or advertisement indicating a limitation, specification, or discrimination based on the race, color, religion, age, physical or mental handicap, sex, or national origin of an applicant for admission; or

(d) to announce or follow a policy of denial or limitation through a quota or otherwise of educational opportunities of a group or its members because of race, color, religion, physical or mental handicap, or national origin.

History: En. 64-306 by Sec. 2, Ch. 283,  
L. 1974.

**64-307. Sex, age, physical or mental handicap, race, religion, color, origin no justification for discrimination.** (1) Sex, age, physical or mental handicap, race, religion, color or national origin, either singly or in combination, may not comprise justification for discrimination in and of themselves unless the nature of the service requires the discrimination for the legally demonstrable purposes of correcting a previous discriminatory practice.

(2) Separate lavatory, bathing or dressing facilities based on the distinction of sex may be maintained for the purpose of modesty or privacy.

History: En. 64-307 by Sec. 3, Ch. 283,  
L. 1974.

**64-308. Complaint—how filed—by whom.** (1) A person who believes he is aggrieved by any discriminatory practice prohibited by this act may sign and file with the department a written, verified complaint stating the name and address of the person alleged to have engaged in discriminatory practice, and the particulars of the alleged discriminatory practice. The department may file a complaint in like manner when a discriminatory practice comes to its attention.

(2) The department shall notify the commission in writing of all complaints filed with the department. The commission shall meet a minimum of four (4) times a year to hear and act upon all complaints filed.

(3) At any time after a complaint is filed under this act, alleging an unlawful discriminatory practice, the commission may file a petition in the district court in the county in which the subject of the complaint occurs, or in the county in which a respondent resides or transacts business, seeking appropriate temporary relief against this practice, including an order restraining the respondent from interfering in any manner with an order the commission may enter with respect to the complaint. The court has the power to grant the temporary relief or restraining order it considers just and proper. However, no relief or order extending beyond fourteen (14) days may be granted except by consent of the respondent and upon a finding by the court that there is reasonable cause to believe that the respondent has engaged in discriminatory practices.

(4) The department shall informally investigate the matters set out in a filed complaint promptly and impartially. If the department de-

termines that the allegations are supported by substantial evidence, it shall immediately try to eliminate the discriminatory practice by conference, conciliation, and persuasion.

(5) If the informal efforts to eliminate the alleged discrimination are unsuccessful, the department shall inform the commission of the failure and the commission shall cause written notice to be served together with a copy of the complaint, requiring the person, employer, business, corporation or agency charged in the complaint to answer the allegations of the complaint at a hearing before the commission. The hearing shall be held by the commission in the county where the unlawful conduct is alleged to have occurred unless the person, employer, business, corporation, organization, agency or the commission requests a change of venue for good cause shown. The case in support of the complaint may be presented before the commission by the department, the complainant or by an attorney representing the complainant. The hearing and any subsequent proceedings under the act except as permitted under section 7 [64-310], shall be held in accordance with the Montana Administrative Procedure Act.

History: En. 64-308 by Sec. 5, Ch. 283,  
L. 1974.

**64-309. Power of commission on finding of discrimination.** (1) If the commission finds that a person against whom a complaint was filed has engaged in the discriminatory practice alleged in the complaint, it shall order him to refrain from engaging in the discriminatory conduct. The order may prescribe conditions on the accused's future conduct relevant to the type of discriminatory practice found.

(a) The order may require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against.

(b) The order may require a report on the manner of compliance.

(c) The order may not require the payment of any punitive damages as defined by the Revised Codes of Montana.

(2) If the commission finds that a person against whom a complaint was filed has not engaged in the discriminatory practice alleged in the complaint, it shall issue and cause to be served on the complainant an order dismissing the complaint.

History: En. 64-309 by Sec. 6, Ch. 283,  
L. 1974.

**64-310. Injunction to enforce commission order.** The department may petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's order by injunction.

History: En. 64-310 by Sec. 7, Ch. 283,  
L. 1974.

**64-311. Department may employ attorney.** (1) The department may employ an attorney as legal counsel. He shall advise the commission in legal matters arising in the discharge of its duties, shall assist in the



preparation and presentation of complaints to the commission, and shall represent the commission in legal actions to which it is a party. The attorney general shall perform this function at the request of the commission.

History: En. 64-311 by Sec. 8, Ch. 283,  
L. 1974.

**64-312. Unlawful to violate act—penalty.** (1) It is unlawful for a person to aid, abet, incite, compel or coerce the doing of an act forbidden under this act or to attempt to do so.

(2) No person or institution may discharge or discriminate against any participant or potential participant because he or she has made a complaint, assisted with an investigation or instituted proceedings.

(3) A person, employer, business, organization, corporation or agency, both public and private, who or which willfully engages in an unlawful discriminatory practice prohibited by this act or willfully resists, prevents, impedes, or interferes with the commission, the department or any of its authorized representatives in the performance of duty under this act or who or which willfully violates an order of the commission or violates this act in any other manner, is guilty of a misdemeanor and is punishable by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than six (6) months or both.

History: En. 64-312 by Sec. 9, Ch. 283,  
L. 1974.

**Repealing Clause**

Section 10 of Ch. 283, Laws 1974 read  
"Sections 64-302 and 64-303, R. C. M. 1947,  
are repealed."



## TITLE 66—PROFESSIONS AND OCCUPATIONS

### Chapter

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4. Barbers and barbershops, 66-401, 66-401.1, 66-403, 66-403.1, 66-405, 66-407 to 66-412.
5. Chiropractic—regulation of practice, 66-501.1, 66-503 to 66-506, 66-510 to 66-513.
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22. Veterinary medicine—regulation of practice, 66-2201.1, 66-2202 to 66-2204, 66-2207 to 66-2211.
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## CHAPTER 1—ARCHITECTURE—REGULATION OF PRACTICE

### Section

- 66-101. [Transferred.]
- 66-102. Organization of board—powers, meetings and records.
- 66-103. Definitions—examinations for certificates to practice—granting of certificates—registration without examination under certain circumstances.
- 66-107. Registration limited to individuals—employees of architects entitled to practice under supervision—exceptions—exemptions.
- 66-108. Fees payable by applicants for examination—disposition of fees.
- 66-109. Compensation of members of board—disposition and use of funds—report.



- 66-110. Annual fee of licensed architects.
- 66-111. Architects moving from state to be granted demit.
- 66-112. Revocation of certificate.
- 66-113. Architects on public buildings must hold certificate from board.

### 66-101. [Transferred.]

#### Compiler's Notes

Section 24, Ch. 350, Laws of 1974 re-numbered this section as sec. 82A-1602.3.

### 66-102. (3230) Organization of board—powers, meetings and records.

(1) The board of architects must, during the first week in April of each year, elect from among its number a president, secretary, and treasurer, and must have a seal.

(2) The president and secretary may administer oaths in the examination of applications for certificates, and to witnesses called before the board for the transaction of business under this act.

(3) The board shall meet during the first week of April of each year, and at other times, at places the board determines.

(4) The department of professional and occupational licensing must keep a record of proceedings of the board, and also a register of applicants for a certificate, with the name and age of applicants and the number of years spent in the study of architecture, and whether the applicant was granted a certificate or rejected. The register is prima facie evidence of the matters contained in it.

History: En. Sec. 2, Ch. 158, L. 1917; re-en. Sec. 3230, R. C. M. 1921; amd. Sec. 25, Ch. 350, L. 1974.

#### Amendments

The 1973 amendment inserted the first sentence of the second paragraph; and substituted "After the expiration of these initial terms, members shall serve three (3) year terms" for "The architects so appointed shall hold their re-

spective offices for term of four years" at the beginning of the second sentence of the second paragraph.

The 1974 amendment substituted "board of architects" in subsection (1) for "board of architectural examiners"; substituted "department of professional and occupational licensing" in subsection (4) for "board"; and made minor changes in phraseology and style.

**66-103. (3231) Definitions—examinations for certificates to practice—granting of certificates—registration without examination under certain circumstances.** (1) Except as provided in this act, no person may practice architecture in this state or use the title "architect" or "registered architect," or any words, letters, figures, or other device indicating or intending to imply that he is an architect, without having qualified under this act.

(2) Unless the context requires otherwise, in this act:

(a) "Practice of architecture" means rendering or offering to render services by consultations, preliminary studies, drawings, specifications, or other service in connection with the design of a building or addition or alteration thereto, whether one or all of these services are performed either in person or as the directing head of an organization.

(b) "Architect" means an individual technically and legally qualified to practice architecture and who is authorized under this act to practice architecture.

(c) "Building" means a structure intended primarily for human occupancy or use.

(d) "Board" means the board of architects, provided for in section 82A-1602.3.

(e) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

(3) A person wishing to practice architecture in this state shall apply to the department for a certificate to do so. A person applying shall have successfully completed the requirement of prerequisites in education, practical experience and a written examination as prescribed by the board in conformance with the standard national council of architectural registration boards examination and grading procedure. After examination the department shall, if the candidate has been found qualified, grant a certificate to the candidate to practice architecture in this state, which may only be granted on the consent of not less than two (2) members of the board, and attested by the secretary, and have the seal of the board attached. However, an architect holding a valid and current license to practice in another state, territory or country will be granted a certificate to practice in Montana following presentation of a certificate issued by national council of architectural registration boards and approved by the board. But no arrangement may be made under this section which may lower the standard of practice of architecture in this state. The board may, if considered necessary, require an examination of applicants for a license from other states, after careful consideration of the credentials from those states. The board shall by rule establish methods and procedures for investigation of applicants for a license by reciprocity.

**History:** En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R. C. M. 1921; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974.

#### Amendments

The 1973 amendment substituted "intended primarily for human occupancy or use" for "consisting of foundation, floors, walls, columns, girders, and roof, or a combination of any number of these parts, including relating mechanical and electrical equipment, with or without parts or appurtenances" at the end of subsection (c); substituted the second sentence of subsection (3) for sentences reading "Every person so applying shall submit to an examination of the following branches to wit: Arithmetic and elementary mathematics, knowledge of building materials and construction, structural, mechanical and electrical engineering phases of construction, architectural drawings, technical education and experience, and

such other branches as the board may deem advisable. Said board shall cause examination to be most scientific and practical, but of sufficient severity to test the candidate's fitness to practice architecture in this state"; deleted from the third sentence of subsection (3) a proviso allowing the president to grant interim certificates good until the next board meeting; and substituted the present proviso to the third sentence of subsection (3) for a proviso allowing the board to make reciprocal arrangements with other states.

The 1974 amendment inserted the first clause of subsection (2); inserted definitions of "Board" and "Department"; substituted "department" for "board" in two places in subsection (3); deleted a final paragraph relating to architects in practice prior to July 1, 1957; and made minor changes in phraseology, punctuation and style.

**66-107. (3235) Registration limited to individuals — employees of architects entitled to practice under supervision—exceptions—exemptions.**

History: En. Sec. 7, Ch. 158, L. 1917; re-en. Sec. 3235, R. C. M. 1921; amd. Sec. 2, Ch. 149, L. 1957; amd. Sec. 3, Ch. 439, L. 1973.

#### Compiler's Notes

Laws 1973, Ch. 439 amended this section but made no change therein. For section, see parent volume.

**66-108. (3236) Fees payable by applicants for examination—disposition of fees.** (1) Applicants for examination shall pay in advance to the department a fee set by the board, commensurate with the cost, which shall defray the entire examination expense of the candidate. An applicant failing to pass the examination is entitled to a second examination within one (1) year on payment of a reasonable fee, prescribed by the board.

(2) The money received from the applicant shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

History: En. Sec. 8, Ch. 158, L. 1917; re-en. Sec. 3236, R. C. M. 1921; amd. Sec. 140, Ch. 147, L. 1963; amd. Sec. 1, Ch. 138, L. 1967; amd. Sec. 4, Ch. 439, L. 1973; amd. Sec. 27, Ch. 350, L. 1974.

#### Amendments

The 1973 amendment substituted "commensurate with the cost and set by the board" for "of twenty-five dollars (\$25)" in the first sentence of the first paragraph; corrected the name of the board; and substituted "a reasonable fee, pre-

scribed by the board" for "of five dollars (\$5) for each section of the said examination" at the end of the second sentence of the first paragraph.

The 1974 amendment substituted "department" for "secretary of said board" in the first sentence of subsection (1); substituted "deposited" for "turned over to the state treasurer of the state of Montana" in subsection (2); added "subject to section 82A-1603(6)" in subsection (2); and made minor changes in phraseology and style.

**66-109. (3237) Compensation of members of board—disposition and use of funds—report.** (1) Each member of the board is allowed the sum of twenty-five dollars (\$25) per day plus mileage in accordance with section 59-801 and actual and necessary expenses while in the discharge of his actual duties.

(2) All fees and moneys received by the department for licenses from practicing architects shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

History: En. Sec. 9, Ch. 158, L. 1917; re-en. Sec. 3237, R. C. M. 1921; amd. Sec. 141, Ch. 147, L. 1963; amd. Sec. 2, Ch. 138, L. 1967; amd. Sec. 18, Ch. 93, L. 1969; amd. Sec. 5, Ch. 439, L. 1973; amd. Sec. 28, Ch. 350, L. 1974.

#### Compiler's Notes

The compiler has inserted the bracketed word "architects" at the end of the section.

#### Amendments

The 1973 amendment increased the basic per diem from \$20 to \$25; substituted "in accordance with section 59-801 and a per

diem allowance of actual and necessary expenses" for the former mileage rate of ten cents per mile; and deleted a third paragraph requiring the members to report under section 82-4002.

The 1974 amendment substituted "board" for "examining board" in subsection (1) and for "board of architectural examiners" in subsection (2); inserted "by the department" after "moneys received" in subsection (2); deleted "with the state treasurer" after "deposited" in subsection (2); added "subject to section 82A-1603(6)" in subsection (2); and made minor changes in phraseology and style.

**66-110. (3238) Annual fee of licensed architects.** A licensed architect in this state who desires to continue the practice of his profession shall annually, during the time he continues in this practice, pay to the department, during the month of July, a fee of twenty dollars (\$20).



**History:** En. Sec. 10, Ch. 158, L. 1917; re-en. Sec. 3238, R. C. M. 1921; amd. Sec. 3, Ch. 138, L. 1967; amd. Sec. 29, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "department" for "treasurer of the state of Montana"; and made minor changes in phraseology.

**66-111. (3239) Architects moving from state to be granted demit.** A licensed architect moving from the state may receive a demit from the board, and if he desires to re-establish himself in the state, the department will issue a certificate to him without examination, if he pays the regular license fee.

**History:** En. Sec. 11, Ch. 158, L. 1917; re-en. Sec. 3239, R. C. M. 1921; amd. Sec. 30, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "board" for "board of architectural examiners"; substituted "department" for "board"; and made minor changes in phraseology.

**66-112. (3240) Revocation of certificate.** (1) The board may revoke a certificate if proof satisfactory to the board is presented of the following: (a) The certificate was obtained through fraud or misrepresentation; (b) The holder of the certificate has been found guilty by the board or by a court of justice of fraud or deceit in his professional practice or has been convicted of a felony by a court of justice; (c) The holder of the certificate has been found guilty by the board of gross incompetency or of recklessness in the planning or construction of buildings; (d) The holder of the certificate has been found guilty by the board of any of the following acts which constitute unprofessional conduct: (i) Willful departure in a material respect from approved plans or specifications without the consent of the owner or his authorized representative; (ii) Willful violation of the building codes of this state or a political subdivision; (iii) Aiding or abetting an unlicensed person to violate or evade this act; or (iv) Sealing or signing plans or specifications not prepared under his direct supervision and control; or (e) The holder of the certificate has violated standards of professional conduct adopted by the board.

(2) A certificate may not be revoked until the party holding the certificate is given notice and an opportunity for a hearing.

If the board's findings and conclusions are adverse to the accused, his certificate stands revoked and annulled at the expiration of thirty (30) days from the final decision adverse to the party.

**History:** En. Sec. 12, Ch. 158, L. 1917; re-en. Sec. 3240, R. C. M. 1921; amd. Sec. 3, Ch. 149, L. 1957; amd. Sec. 4, Ch. 138, L. 1967; amd. Sec. 6, Ch. 439, L. 1973; amd. Sec. 31, Ch. 350, L. 1974.

**Amendments**

The 1973 amendment added clause (e) at the end of subsection (1); substituted "architects" for "architectural examiners" in the first sentence of the former second paragraph; and substituted "any judicial district" for "the first judicial district" in the former third paragraph. For prior version, see parent volume.

The 1974 amendment substituted "board" for "board of architectural examiners" in the first sentence of subsection (1); added subsection (2); deleted three paragraphs relating to proceedings for revocation of a certificate (see parent volume); and made minor changes in phraseology, punctuation and style.

**Effective Date**

Section 7 of Ch. 439, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 22, 1973.

**66-113. Architects on public buildings must hold certificate from board.**

A contract for the employment of or the rendering of professional services by an architect relating to the planning or construction of public buildings or other public works or improvements may not be entered into by this state or its agencies, or a county, city, or school district in this state unless the architect is the holder in good standing of a certificate granted by the board entitling him to practice architecture in this state.

**History:** En. Sec. 1, Ch. 190, L. 1953; for "board of architectural examiners";  
amd. Sec. 32, Ch. 350, L. 1974. and made minor changes in phraseology,  
punctuation and style.

**Amendments**

The 1974 amendment substituted "board"

**CHAPTER 2—AUCTIONEERS AND AUCTION SALES****Section**

66-223. Application for license—contents.

66-227. Inventory of merchandise sold and prices received—filing.

**66-223. Application for license—contents.** Any person, firm, association or corporation desiring to offer any new goods, wares or merchandise for sale at public auction shall file application for a license for that purpose with the treasurer of the county in this state in which the said auction is proposed to be held. The application shall be filed not less than ten (10) full days prior to the date the said auction is to be held. The application shall state the following facts:

(a) to (d). \* \* \* [Same as parent volume.]

(e) Attached to the application shall be copies of notices, which ten (10) days before the said application has been filed, shall have been mailed registered mail by the proposed seller to the state department of revenue of the state of Montana or such other department as may be charged with the duty of collecting gross income taxes, corporation licenses, or such other taxes of a comparable nature, and to the assessor of the county in which said auction is to be held. The said notices must state the precise time and place where the said auction is to be held, the approximate value of the new goods, wares or merchandise to be offered for sale or sold and such other information as the said state department of revenue may request.

(f) and (g). \* \* \* [Same as parent volume.]

**History:** En. Sec. 4, Ch. 111, L. 1955;  
amd. Sec. 22, Ch. 391, L. 1973.

**Amendments**

The 1973 amendment substituted "department of revenue" for "board of equal-

ization" in the first and second sentences of subdivision (e); and deleted "or the said county assessor" near the end of the second sentence in subdivision (e), in order to implement article VIII, section 3 of the 1972 constitution.

**66-227. Inventory of merchandise sold and prices received—filing.**

Within ten (10) days after the last day of said auction sale, the applicant shall file in duplicate with the county treasurer of the county wherein said auction sale was held, an inventory of all merchandise sold at such auction and the price received therefor, which inventory shall be verified by the person who filed the application for the license with the said treasurer.

The county treasurer shall immediately after receiving such report and inventory forward a copy thereof to the state department of revenue.

**History:** En. Sec. 8, Ch. 111, L. 1955;  
amd. Sec. 23, Ch. 391, L. 1973.

#### Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the section.

### CHAPTER 4—BARBERS AND BARBERSHOPS

#### Section

- 66-401. Sanitation of barbershops, barber schools and barber colleges and definition of term barbershop.
- 66-401.1. Definitions.
- 66-403. Licensing and registration of barbers, barbershops, barber schools and barber colleges, prohibiting barber schools and colleges from charging patrons for services.
- 66-403.1. Refusal to issue or renew, or suspension of, licenses—hearing.
- 66-405. Display of certificate and license.
- 66-406. [Transferred.]
- 66-407. Officers, official seal.
- 66-408. Compensation.
- 66-409. Powers and duties.
- 66-410. Penalty.
- 66-411. Fees to be paid by apprentices, students, barbers, barbershops and training programs.
- 66-412. Barber's registration and license.

**66-401. (3228.19) Sanitation of barbershops, barber schools and barber colleges and definition of term barbershop.** (1) Barbershops, barber schools, and barber colleges shall be operated and maintained in a sanitary condition in order to preserve the public health and prevent the spread of disease. The board of barbers and the department of health and environmental sciences may adopt rules to preserve the public health and prevent the spread of disease. A barber, or barber apprentice may not receive a certificate of registration or renewal until he has presented to the board of barbers a physician's certificate showing him to be free of physical ailments that would tend to endanger the health of the public, and a person practicing barbering without a certificate of registration is guilty of a violation of this chapter.

(2) It is unlawful for a barber, barber apprentice, or student of barbering to practice the occupation of a barber, or do barber work while he has an infectious, contagious, or communicable disease that would endanger the health of the public.

(3) If a barber or barber apprentice, after securing his certificate, contracts a communicable, infectious, or contagious disease, endangering the public health, the board of barbers shall revoke or suspend his certificate of registration until the board has satisfactory proof that the barber or barber apprentice is no longer afflicted with the communicable, infectious, or contagious disease.

**History:** En. Sec. 1, Ch. 127, L. 1929;  
amd. Sec. 1, Ch. 183, L. 1937; amd. Sec. 33,  
Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "board of barbers" for "board of barber examiners" throughout the section; substituted

"department of health and environmental sciences" for "state board of health" in subsection (1); substituted "this chapter" for "this act" in subsection (1); deleted a final subsection defining "barbershop"; and made minor changes in phraseology and style.



**66-401.1. Definitions.** Unless the context requires otherwise, as used in this chapter:

(1) "Barbershop" means a place where a person carries on, engages in, practices, or causes to be carried on, engaged in, or practiced the business of barbering.

(2) "Board" means the board of barbers, provided for in section 82A-1602.5.

(3) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. 66-401.1 by Sec. 34, Ch. 350, L. 1974.

**66-403. (3228.21) Licensing and registration of barbers, barbershops, barber schools and barber colleges, prohibiting barber schools and colleges from charging patrons for services.** (1) A person is qualified to receive a certificate of registration to practice barbering only by serving as an apprentice barber and successfully passing an examination conducted by the department, subject to section 82A-1603, to determine his fitness to practice barbering.

(2) An apprentice, under this chapter, is a person who receives instruction in an approved barber school or college and from a barber authorized to practice barbering in this state.

(3) An apprentice must file with the department an application setting forth the following information:

- (a) Full name and age of apprentice;
- (b) Name and place of approved barber school;
- (c) Dates of attendance at approved barber school;
- (d) Whether the applicant received a certificate of graduation from an approved barber school; and
- (e) Other information the board considers necessary.

(4) An apprentice applicant must successfully pass an apprentice examination conducted by the department, subject to section 82A-1603, and pay to the department the required fee. The department shall then issue an apprentice barbering card which expires two (2) years from the date of examination.

(5) A registered apprentice may not independently practice or engage in the practice of barbering; however, he may do the acts which constitute the practice of barbering when done under the immediate personal supervision of a registered barber.

(6) A school or college of barbering may not be approved by the board unless it teaches the curriculum of the standardized schools approved by the national education council of barber examiners. Students of schools or colleges may, after attending the schools for a period of nine (9) months, make application to the department for an apprenticeship card to practice barbering under the immediate personal supervision of a licensed barber for the period of one (1) year.

(7) On completion of one (1) year of apprenticeship under the immediate personal supervision of a licensed barber, an apprentice must apply

to the department to take the examination for a barber's certificate of registration. An apprentice may take the examination for a barber's certificate of registration as many as three (3) times before expiration of the apprentice card. If an apprentice fails to pass the examination for a barber's certificate of registration three (3) times, he shall surrender the apprentice card to the department and may not be authorized to do the acts which constitute the practice of barbering.

(8) A barbershop, school, or college must be conducted at a fixed place of establishment. A person or corporation may not open or maintain a barbershop, school, or college, or hold himself or itself out as engaging in or conducting a barbershop, school, or college, unless first licensed by the board. A barber school or college operating in this state must have in charge a person who has had ten (10) years' continuous experience as a barber. The owner of the school or college shall first secure a permit, granted by the board and issued by the department, to operate, on payment of an annual license fee of fifty dollars (\$50), and shall keep the permit prominently displayed, and shall, before commencing business, file with the secretary of state a bond to this state, which shall be approved by the attorney general, in the sum of two thousand dollars (\$2,000), conditioned on the faithful compliance of the barber school or college with this chapter, and the payment of judgments that may be obtained against the school, college, or owner on account of fraud, misrepresentation, or deceit practiced by them, or by their agents. Barber schools or barber colleges may not charge patrons for barbering services and materials rendered. All barber schools or colleges shall keep prominently displayed a substantial sign as a barber school or barber college. All barber schools or colleges on receiving students shall immediately apply to the department for student permits on blank forms prescribed by the board.

(9) An application for a barbershop, school, or college license shall be in writing and verified on a form prescribed by the board. On receipt by the department of an application for a license, and on payment to the department of the initial inspection fee, the board shall have an investigation and inspection made as to the character of the applicant, and on notice and after hearing shall report its findings to the department, which shall grant a license, if the board finds that the applicant is of good character, and that the proposed barbershop, school, or college is equipped and will be conducted as required under this chapter. The application must be granted or refused within thirty (30) days from the date of filing of the application or within fifteen (15) days after the hearing on the application if a hearing is held.

(10) A barbershop license may not be issued to anyone except one who holds a valid barber's certificate under this chapter, and a barbershop may not be maintained or conducted except by one who holds a barber-shop license issued by the department under this chapter, and this certificate or license is not transferable as to person or place.

(11) Before a license is issued to conduct a barbershop, school, or college in this state the barbershop, school, or college must be inspected by

the department and approved by the board and shall meet the following requirements:

(a) It must have both hot and cold running water connected with the city water supply. In villages or towns where running water is not available, hot water tanks shall have not less than a two (2) gallon capacity with gravity pressure. Waste water shall be disposed of through some system, carrying it away from the building. This shall be done by sewer connections, or in a manner meeting the requirements of the department of health and environmental sciences rules, city ordinances, and having the approval of the city or village board of health, as required by law.

(b) The headrest of a barber chair must be equipped so that each customer will be supplied with a clean, fresh paper or towel.

(c) It must have a closed cabinet for each chair, to keep instruments in when not in use, and must have proper sterilization equipment for immersing instruments before use on each customer.

(d) It must have a sufficient number of towels so that each customer will be served with a clean laundered towel.

(e) It must be well-lighted, well-ventilated, and kept in a clean, orderly and sanitary condition at all times.

(f) It must pay to the department the required fee.

(12) Barbershops, barber schools, or colleges shall be open for inspection during business hours, to members of the department. An owner or manager of a barbershop licensed under this chapter shall make certain that each barber employed holds a certificate to practice barbering in this state, and that employees observe the sanitary rules of the department of health and environmental sciences and the department and report to the department the name of a person practicing barbering therein, who has a communicable disease.

**History:** En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "board of barber examiners" throughout the section; inserted "subject to section 82A-1603" in subsections (1) and (4); deleted "as defined by section 66-402 of this code" from the end of subsection (1); substituted "this chapter" for "this act" throughout the section; substituted "board" for "board of barber exam-

iners" in the second sentence of subsection (8); substituted "permit granted by the board and issued by the department" in the fourth sentence of subsection (8) for "secure from the board of barber examiners a permit"; substituted "prescribed by the board" for "provided by the board of barber examiners" in the last sentence of subsection (8) and the first sentence of subsection (9); substituted "department of health and environmental sciences" for "state department of health" in subdivision (11)(a) and subsection (12); deleted two final subsections relating to denial of licenses (see parent volume); and made minor changes in phraseology, punctuation and style.

#### 66-403.1. Refusal to issue or renew, or suspension of, licenses—hearing.

The board may, after notice and opportunity for a hearing, either refuse to issue or renew, or may suspend or revoke a barbershop, or barber school or college license for any one or combination of the following causes:

(1) The violation of any of the provisions of subdivisions (a) through (e) of subsection 11 of section 66-403, subsection 12 of section 66-403, and section 66-405;



(2) Conviction of a felony, shown by a certified copy of the record of the court of conviction;

(3) Gross malpractice or gross incompetency;

(4) Continued practice by a person knowingly having an infectious or contagious disease;

(5) Advertising by means of knowingly false or deceptive statements;

(6) Advertising, practicing, or attempting to practice under a trade name other than one's own;

(7) Habitual drunkenness or addiction to the use of morphine, cocaine, or other habit-forming drugs;

(8) The commission of any of the offenses described in section 66-409.

History: En. 66-403.1 by Sec. 36, Ch. 350, L. 1974.

### 66-404. (3228.22) Repealed.

#### Repeal

Section 66-404 (Sec. 4, Ch. 127, L. 1929; Sec. 2, Ch. 150, L. 1939), relating to bar-

bers in practice on date original act went into effect, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-405. (3228.23) Display of certificate and license.** (1) A holder of a certificate of registration shall display it in a conspicuous place, adjacent to or near his work chair.

(2) A license to operate a barbershop, school, or college shall specify the name of the licensee and shall be kept in a conspicuous place in the barbershop, school, or college. A barbershop, school, or college may not be conducted or held out as being conducted under any name except the name appearing as licensee on the license issued by the department.

(3) A barbershop shall display a schedule of prices in a conspicuous place.

History: En. Sec. 5, Ch. 127, L. 1929; amd. Sec. 3, Ch. 150, L. 1939; amd. Sec. 37, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "board of barber examiners" in subsection (2); and made minor changes in phraseology, punctuation and style.

### 66-406. [Transferred.]

#### Compiler's Notes

Section 38, Ch. 350, Laws of 1974 re-numbered this section as sec. 82A-1602.5.

**66-407. Officers, official seal.** The board shall elect a president, secretary, and treasurer. It shall adopt a seal for the authentication of its orders and records. The department shall keep a record of proceedings of the board. Money collected by the department shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

History: En. Sec. 7, Ch. 127, L. 1929; amd. Sec. 138, Ch. 147, L. 1963; amd. Sec. 23, Ch. 177, L. 1965; amd. Sec. 39, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "secretary" in the third

sentence and "board" in the fourth sentence; substituted "board" for "board of barber examiners" in the fourth sentence; deleted "with the state treasurer" after "deposited" and inserted "subject to section 82A-1603(6)" in the fourth sentence; and made minor changes in phraseology and punctuation.

**66-408. (3228.26) Compensation.** Each member of the board shall receive a compensation of twenty-five dollars (\$25) per day while attending board meetings plus legitimate and necessary expenses incurred in attending meetings of the board.

**History:** En. Sec. 8, Ch. 127, L. 1929; amd. Sec. 2, Ch. 237, L. 1957; amd. Sec. 139, Ch. 147, L. 1963; amd. Sec. 2, Ch. 48, L. 1969; amd. Sec. 19, Ch. 93, L. 1969; amd. Sec. 1, Ch. 302, L. 1973; amd. Sec. 40, Ch. 350, L. 1974.

#### Amendments

The 1973 amendment inserted "thirty dollars (\$30) per day while engaged in the duties of inspecting barbershops and" in the first paragraph; added "or while engaged in the duties of inspecting barbershops" at the end of the first paragraph; and corrected the name of the board at the beginning of the second paragraph.

The 1974 amendment deleted "thirty dollars (\$30) per day while engaged in the duties of inspecting barbershops" after "compensation of"; deleted "or while engaged in the duties of inspecting barbershops" at the end of the section; deleted former second and third paragraphs reading "The board of barbers shall be self-sustaining financially and no funds of the state shall be paid for the operation and maintenance of said board. The disbursements of said board shall be paid upon the warrant of the president and secretary. The board shall make reports as provided in section 82-4002"; and made minor changes in phraseology.

**66-409. (3228.27) Powers and duties.** (1) The department shall, subject to section 82A-1603, conduct practical examinations of applicants for apprentice cards and for certificates of registration to practice as registered barbers, not less than four (4) times each year at times and places the board determines. The examinations shall cover the fundamentals of barbering, dermatology, and sanitation. The department shall issue apprentice cards and certificates of registration.

(2) The board may approve price agreements, establishing minimum prices for barber work, signed and submitted to the board by an organized group or groups of at least seventy-five per cent (75%) of the barbers in a city or town, if the board after ascertaining by investigations and proofs as the situation permits and requires, finds that the price agreement is just and will best protect the public health and safety by affording a sufficient minimum price for barber work to enable the barbers to furnish modern and healthful services and appliances to minimize the danger to the public health incident to this work. Under this chapter, a city or town includes, in addition to the territory within its legal limits, the territory adjacent to it and lying within three (3) miles of its legal limits. In determining whether a price agreement is just and will best protect the public health and safety, the board shall take into consideration all conditions affecting the barber business in its relation to the public health and safety.

(3) In determining reasonable minimum prices the board shall take into consideration the necessary cost incurred in the city or town to maintain a barbershop in a clean, healthful, and sanitary condition.

(4) The board, after making an investigation, shall fix by order the minimum price for work usually performed in a barbershop in the city or town in which the price agreement has been signed. The board may, on the petition of fifty per cent (50%) of the barbers of the city or town, readjust the minimum prices, and the new prices must be approved by seventy-five per cent (75%) of the barbers in the city or town. This section does not apply to students who have been enrolled less than nine (9)

months in a barber college in this state or until they become apprentice barbers.

(5) The board may adopt rules for the administration of this chapter.

(6) A person hired by the department to make an inspection of a barbershop, school, or college shall be recommended by the board.

He shall receive thirty dollars (\$30) per day plus actual and necessary expenses.

**History:** En. Sec. 9, Ch. 127, L. 1929; amd. Sec. 2, Ch. 18, L. 1931; amd. Sec. 4, Ch. 150, L. 1939; amd. Sec. 3, Ch. 48, L. 1969; amd. Sec. 41, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "board of barber examiners" in the first and last sentences of subsection (1); inserted "subject to section 82A-1603" in the first sentence of subsection

(1); deleted a final sentence in subsection (1) relating to appointment of inspectors; substituted "board" for "board of barber examiners" throughout subsections (2) through (5); substituted "this chapter" for "this act" in subsections (2) and (5); increased the required period of enrollment from six to nine months in the last sentence of subsection (4); added subsection (6); and made minor changes in phraseology and punctuation.

**66-410. (3228.28) Penalty.** A person practicing the occupation of a barber without first having obtained a license, under this chapter, or a person knowingly employing a barber who has not obtained a license, or a person who falsely pretends to be qualified to practice the occupation of a barber, or a person who violates this chapter is guilty of a misdemeanor, and on conviction shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200), or imprisoned in the county jail for not less than ten (10) days nor more than ninety (90) days, or both. In addition, the board may, after hearing, suspend or revoke a barber's certificate of registration, or license to operate a barbershop, school, or college, or both, by reason of the person willfully violating this chapter or persistently failing to conform to the rules adopted by the board.

**History:** En. Sec. 10, Ch. 127, L. 1929; amd. Sec. 2, Ch. 18, L. 1931; amd. Sec. 5, Ch. 150, L. 1939; amd. Sec. 42, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "this

chapter" for "this act" throughout the section; substituted "board" for "board of barber examiners" in the last sentence; and made minor changes in phraseology, punctuation and style.

**66-411. (3228.29) Fees to be paid by apprentices, students, barbers, barbershops and training programs.** (1) The fee to be paid by an apprentice for an apprentice examination and an apprentice card is twenty-five dollars (\$25). The fee to be paid by an applicant for an examination to determine his fitness to receive a certificate of registration to practice barbering is twenty dollars (\$20), and for the issuance of the certificate an additional ten dollars (\$10).

(2) A person registered as a barber or barber apprentice shall, before July 1 of each year, pay a license fee of ten dollars (\$10) for the renewal of his certificate of registration. If a barber fails to have the certificate renewed before July 1 of each year the barber shall on renewal of the certificate of registration pay a penalty of ten dollars (\$10), in addition to the regular fee of ten dollars (\$10). If a certificate of registration is



not renewed within one (1) year after the date of expiration, the barber is not entitled to have the certificate of registration renewed, or a new certificate of registration issued, without first applying for and taking the examination and paying the fees provided for in this section. However, physically handicapped persons, trained for the barber profession by the department of social and rehabilitation services and certified by that department as having successfully completed a nine (9) month course in a reputable barber college are not required to pay fees, and are for a period of one (1) year immediately following their training exempt from all except the sanitary provisions of this chapter. No other or additional license or fee may be imposed on barbers or barber apprentices by a municipality or other subdivision of this state.

(3) In addition to the fees and charges now provided by law, barber-shops heretofore established, and which have been under the inspection of the board shall pay an annual license fee of ten dollars (\$10). Barber-shops hereafter established shall pay an initial inspection fee of twenty dollars (\$20) for the first year or portion thereof, and shall pay an annual license fee of ten dollars (\$10).

(4) Barbershop, school, or college licenses expire on July 1 of each year, following the issuance of the license, and an owner or manager of a barbershop, school, or college which continues in active operation shall annually, before July 1, renew his barbershop, school, or college license and pay the required fee. A barbershop which fails to have the license renewed before July 1 of each year shall, on renewal, pay a penalty of ten dollars (\$10), and a barber school or college which fails to have the license renewed before July 1 of each year shall, on renewal, pay a penalty of fifty-five dollars (\$55).

Any person conducting in this state any advanced barber training program, clinic, or seminar for barbers as defined in this chapter, shall pay an annual license fee of fifty dollars (\$50) to the department, or a ten (10) day license fee of fifteen dollars (\$15), and display the license while operating. Any such advanced barber training program, clinic, or seminar may be inspected by the department at reasonable times during operation.

**History:** En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957; amd. Sec. 4, Ch. 48, L. 1969; amd. Sec. 1, Ch. 301, L. 1973; amd. Sec. 1, Ch. 330, L. 1973; amd. Sec. 43, Ch. 350, L. 1974.

#### Compiler's Notes

This section was amended twice in 1973, once by Ch. 301, and once by Ch. 330. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

The 1971 amendment increased the fees specified in subsection (3) from \$3.00,

\$15.00 and \$3.00 to \$5.00, \$20.00 and \$5.00 respectively.

Chapter 301, Laws of 1973, increased from \$5.00 to \$10.00 the fees specified at the end of subsection (1), in the first part of subsection (2), and in subsection (3); corrected the name of the board; and made minor changes in style.

Chapter 330, Laws of 1973, added the last paragraph to subsection (4).

The 1974 amendment substituted "department of social and rehabilitation services" in the fourth sentence of subsection (2) for "state bureau of civilian rehabilitation"; substituted "this chapter" in the fourth sentence of subsection (2) for "the barber act, or any of its amendments"; substituted "board" for "board of barbers" in subsection (3); added the final sentence of the first paragraph of subsection (4); deleted a final sentence in the first para-

graph of subsection (4) relating to the first year the act was in effect; deleted a paragraph in subsection (4) relating to penalties for failing to renew barbershop and barber school licenses; substituted "department" for "board of barbers" and "board" in the second paragraph of sub-

section (4); and made minor changes in phraseology, punctuation and style.

**Effective Date**

Section 2 of Ch. 301, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 15, 1973.

**66-412. (3228.30) Barber's registration and license.** (1) A person may not practice or attempt to practice barbering or serve or attempt to serve as a barber apprentice unless he first receives from the department a certificate of registration.

(2) It is unlawful to operate a barbershop, school, or college unless it has first been issued a license by the department under this chapter.

**History:** En. Sec. 12, Ch. 127, L. 1929; amd. Sec. 7, Ch. 150, L. 1939; amd. Sec. 44, Ch. 350, L. 1974.

partment" for "board of barber examiners" in subsection (1) and for "board" in subsection (2); and made minor changes in phraseology and punctuation.

**Amendments**

The 1974 amendment substituted "de-

**CHAPTER 5—CHIROPRACTIC—REGULATION OF PRACTICE**

**Section**

66-501. [Transferred.]

66-501.1. Definitions.

66-503. Organization of board—meetings—powers and duties.

66-504. Practicing without license—temporary permits.

66-505. Applications to practice—fees for license.

66-506. Examinations—subjects embraced in.

66-510. Refusal and revocation of license—proceedings—reinstatement.

66-511. Recordation of license—failure or refusal to record.

66-512. Renewal of license.

66-513. Disposition of fees—receipts and disbursements—reports—per diem and mileage.

**66-501. [Transferred.]**

**Compiler's Notes**

Section 45, Ch. 350, Laws of 1974 re-numbered this section as sec. 82A-1602.7.

**66-501.1. Definitions.** Unless the context requires otherwise, in this chapter:

(1) "Board" means the board of chiropractors, provided for in section 82A-1602.7.

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

**History:** En. 66-501.1 by Sec. 46, Ch. 350, L. 1974.

**66-502. (3139) Repealed.**

**Repeal**

Section 66-502 (En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3139,

R. C. M. 1921), relating to appointment of the board of chiropractic examiners, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-503. (3140) Organization of board—meetings—powers and duties.**

(1) The board shall elect annually a president, vice-president, and secretary-treasurer from its membership.

(2) The board shall hold a regular meeting on the first Tuesday of October in each year at Helena, and shall hold special meetings at times and places as a majority of the board designates. Not more than four (4) meetings may be held in any one (1) year. A majority of the board constitutes a quorum.

(3) The board may administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board. It shall adopt a seal, which shall be affixed to licenses issued, and shall make rules necessary for the performance of its duties, and shall make a schedule of minimum educational requirements, which are without prejudice, partiality, or discrimination as to the different schools of chiropractic. The department shall keep a record of the proceedings of the board, which shall at all times be open to public inspection.

**History:** En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3140, R. C. M. 1921; amd. Sec. 47, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "board" for "board of chiropractic examiners" in subsection (1); substituted "department"

for "secretary of the board" in the final sentence of subsection (3); deleted a sentence from subsection (3) requiring the board to file a copy of its rules with the secretary of state; deleted a fourth paragraph relating to issuing each member of the board a license to practice chiropractic; and made minor changes in phraseology, punctuation and style.

**66-504. (3141) Practicing without license—temporary permits. (1)**

It is unlawful for a person to practice chiropractic in this state without first obtaining a license under this act.

(2) When application for examination for license is filed with the department, under section 66-505, the board may authorize the department to issue to the applicant a temporary permit to practice, which is good until the next meeting of the board.

**History:** En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3141, R. C. M. 1921; amd. Sec. 48, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment deleted from subsection (1) a clause relating to chiroprac-

tors in practice on the date the original act was passed; substituted "department" for "board" near the beginning of subsection (2); substituted "board may authorize the department to issue" in subsection (2) for "board may issue"; and made minor changes in phraseology, punctuation and style.

**66-505. (3142) Applications to practice—fees for license. (1)**

A person wishing to practice chiropractic in this state shall make application to the department on the form and in the manner prescribed by the board, at least fifteen (15) days prior to a meeting of the board. Each applicant shall be a graduate of a college of chiropractic approved by the board in which he has attended a course of study of four (4) school years of not less than nine (9) months each, and shall present evidence showing completion of two (2) full academic years of college or university work from an institution acceptable to the board of education. Application shall be made in writing and shall be sworn to by an officer authorized to administer oaths, and shall recite the history of applicant's educational



qualifications, how long he has studied chiropractic, of what school or college he is a graduate, and the length of time he has been engaged in practice, accompanying the same with proofs by diplomas, certificates, etc., and shall accompany the application with satisfactory evidence of good character and reputation.

(2) There shall be paid to the department, by an applicant for a license, a fee of fifty dollars (\$50), twenty-five dollars (\$25) of which shall accompany the application and the remainder shall be paid on the issuance of the license. Like fees shall be paid for a subsequent examination and application.

**History:** En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 224, L. 1919; re-en. Sec. 3142, R. C. M. 1921; amd. Sec. 1, Ch. 129, L. 1933; amd. Sec. 1, Ch. 123, L. 1951; amd. Sec. 1, Ch. 178, L. 1955; amd. Sec. 1, Ch. 188, L. 1961; amd. Sec. 49, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted refer-

ences to department for references to board of chiropractic examiners in the first sentences of subsections (1) and (2); deleted references throughout subsection (1) to chiropractors in practice on the effective date of the 1951 amendment to the act; substituted "board of education" for "Montana state board of education" near the middle of subsection (1); and made minor changes in phraseology, punctuation and style.

**66-506. (3143) Examinations—subjects embraced in.** (1) Examinations for a license to practice chiropractic shall be made by the department subject to section 82A-1603, according to the method considered by the board to be the most practicable and expeditious to test the applicant's qualifications. The application shall be designated by a number instead of the applicant's name, so that the identity will not be discovered or disclosed until after the examination papers are graded.

(2) Examinations shall be made in writing, the subjects of which are as follows: anatomy, physiology, symptomatology, diagnosis, chiropractic orthopedy, principles of chiropractic and adjusting, sanitation and hygiene, urinalysis, gynecology, and palpation. Additional subjects may be prescribed by the board to meet new conditions. A license shall be granted to applicants who correctly answer seventy-five per cent (75%) of all questions asked, and if an applicant fails to answer correctly sixty per cent (60%) of the questions on any branch of the examination, he is not entitled to a license.

(3) The board may accept the grades an applicant has received in the written examinations given by the national board of chiropractic examiners and may authorize the department to issue a license without further written examination to an applicant who holds a valid certificate from the national board of chiropractic examiners, if the applicant meets the other requirements of this chapter and satisfactorily passes a practical examination before the department, subject to section 82A-1603.

**History:** En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3143, R. C. M. 1921; amd. Sec. 1, Ch. 36, L. 1967; amd. Sec. 50, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment subject to section 82A-1603" in subsections (1) and (3) for "board"; substituted "may authorize the department to issue" in subsection (3) for "may grant"; and made minor changes in phraseology and punctuation.

**66-510. (3147) Refusal and revocation of license—proceedings—reinstatement.** (1) The board may revoke or refuse to grant a license to practice chiropractic in this state, or may cause a licensee's name to be removed from the records in the office of the clerk and recorder in this state on the following grounds: The employment of fraud or deception in applying for a license or in passing an examination under this act; practice of chiropractic under a false or assumed name or the impersonation of another practitioner of like or different name; conviction of a crime involving moral turpitude; or habitual intemperance in the use of alcohol, narcotics, or stimulants to such an extent as to incapacitate him for the performance of his professional duties. A person who is a licensee, or an applicant for a license to practice chiropractic, against whom grounds for revoking or refusing a license is presented to the board with a view of having the board revoke or refuse to grant a license, shall have notice and a hearing before the board in respecting the guilt or innocence of the person.

(2) The board may within two (2) years of the refusal, revocation, or cancellation of registration under this section, by a majority vote, authorize the department to issue a new license or grant a license to the person affected, restoring him to or conferring on him the rights and privileges of the practice of chiropractic. A person to whom these rights and privileges have been restored shall pay to the department the sum of fifty dollars (\$50) on issuance of a new license.

**History:** En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3147, R. C. M. 1921; amd. Sec. 2, Ch. 188, L. 1961; amd. Sec. 51, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "board" for "state board of chiropractic examiners" at the beginning of subsection (1); substituted "clerk and recorder" for "recorder

of deeds" near the beginning of subsection (1); substituted "shall have notice" for "shall be furnished with copy of the complaint" near the end of subsection (1); inserted "authorize the department to" before "issue" near the beginning of subsection (2); substituted "department" for "secretary-treasurer" in the last sentence of subsection (2); and made minor changes in phraseology and punctuation.

#### **66-511. (3148) Recordation of license—failure or refusal to record.**

(1) A person who receives a license from the department shall have it recorded in the office of the clerk and recorder of the county of which he resides, and shall have it recorded in the counties to which he subsequently moves for the purpose of practicing chiropractic.

(2) The failure or refusal on the part of the holder of a license to have it recorded before he practices chiropractic in this state, after having been notified by the department to do so, is sufficient grounds to revoke or cancel a license and render it void. The clerk and recorder shall keep for public inspection, in a book provided for that purpose, a complete list and description of the licenses recorded by him. When a license is presented to him for record, he shall stamp on its face his signed memorandum of the date when the license was presented for record.

**History:** En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3148, R. C. M. 1921; amd. Sec. 52, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "state board of chiropractic examiners" in subsections (1) and (2);

substituted "clerk and recorder" for "recorder of deeds" in subsections (1) and (2); and made minor changes in phraseology and punctuation.

**66-512. (3149) Renewal of license.** A license expires on September 1 of each year, and shall be renewed by the department, on payment of a renewal fee of not less than five dollars (\$5) nor more than twenty-five dollars (\$25), as set by the board, and the presentation of evidence satisfactory to the board that the licensee, in the year preceding the application for renewal, attended an educational program for chiropractors conducted by a school of chiropractic licensed to operate in the state of its location, or an educational program conducted by the state association of licensed chiropractors of a state, or an educational program approved by the board. However, the board may authorize the department to issue renewals, but not consecutive renewals, on a showing satisfactory to the board that attendance at the educational programs was unavoidably prevented; and new licensees during the six (6) months preceding September 1, by examination, shall be granted renewal licenses without attending the educational programs. Failure to renew a license does not prevent a licensee from subsequently applying for and receiving a license, as if there were no lapse of time between the expiration of the old license, and the granting of a renewal license. This section does not prevent a renewal of the license if in the preceding year for any reason, at least one of the educational programs is not conducted in this state.

**History:** En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 90, L. 1921; re-en. Sec. 3149, R. C. M. 1921; amd. Sec. 2, Ch. 129, L. 1933; amd. Sec. 2, Ch. 123, L. 1951; amd. Sec. 3, Ch. 188, L. 1961; amd. Sec. 1, Ch. 8, L. 1965; amd. Sec. 53, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "board" in the first sentence; substituted "board" for "state board of chiropractic examiners" in two places in the first sentence; substituted "board may authorize the department to issue" for "board may grant" in the second sentence; and made minor changes in phraseology and punctuation.

**66-513. (3150) Disposition of fees—receipts and disbursements—reports—per diem and mileage.** (1) Fees collected by the department under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

(2) The department shall keep an accurate account of funds received and vouchers issued by the department.

(3) The members of the board shall receive twenty-five dollars (\$25) for each day during which they are actually engaged in the discharge of their duties, plus mileage as provided in section 59-801, and reimbursement for actual and necessary expenses incurred.

**History:** En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3150, R. C. M. 1921; amd. Sec. 4, Ch. 188, L. 1961; amd. Sec. 142, Ch. 147, L. 1963; amd. Sec. 20, Ch. 93, L. 1969; amd. Sec. 54, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "state board of chiropractic examiners" in subsection (1) and for "secretary-treasurer" and "board" in subsection (2); deleted "with the state treasurer" after "deposited" in subsection (1); substituted "board" for "state board of chiropractic examiners" in subsection (1); added "subject to section 82A-1603(6)" to the end of subsection (1); substituted "mileage as provided in section 59-801, and



reimbursement for actual and necessary expenses incurred" in subsection (3) for "mileage at the rate of ten cents (\$.10) per mile for each mile necessarily traveled

in going to and from any meeting of said board"; and made minor changes in phraseology and punctuation.

### 66-514. (3151) Repealed.

#### Repeal

Section 66-514 (En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3151, R. C. M. 1921; Sec. 24, Ch. 177, L. 1965),

relating to dismissal of members of the state board of chiropractic examiners, was repealed by Sec. 363, Ch. 350, Laws of 1974.

## CHAPTER 6—PODIATRY—REGULATION OF PRACTICE

### Section

66-601. Definitions.

66-602. License—amputations not allowed.

66-603. Examinations schools—fees—nonresident practitioners.

66-604. Examination—fees.

66-605. Designation of licensees—renewals—reissuance of license—display of license required—recording necessary.

66-606. Refusal or revocation of license.

66-607. Deposit of moneys collected.

66-608. Compensation of board—expenses.

**66-601. (3154.1) Definitions.** Unless the context requires otherwise, in this act: (1) "Chiropody" or "podiatry" means the diagnosis, medical, surgical, mechanical, manipulative, and electrical treatment of ailments of the human foot.

(2) "Podiatrist" means one practicing podiatry.

(3) "Board" means the board of podiatry examiners, provided for in section 82A-1602.6.

(4) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

**History:** En. Sec. 1, Ch. 2, L. 1923; amd. Sec. 1, Ch. 218, L. 1939; amd. Sec. 55, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment inserted the introductory clause; added subdivisions (2) through (4); and made minor changes in phraseology and punctuation.

**66-602. (3154.2) License—amputations not allowed.** It is unlawful for a person to profess to be a podiatrist, to practice or assume the duties incident to podiatry, or to advertise in any form or hold himself out to the public as a chiropodist or podiatrist, or in a sign or advertisement to use the word chiropodist or podiatrist, foot correctionist, or any other term, terms, or letters indicating to the public that he is holding himself out as a podiatrist or foot correctionist in any manner, without first obtaining from the board a license authorizing the practice of podiatry in this state, except under this act. A podiatrist may not amputate the human foot or toe, or administer an anesthetic other than local.

**History:** En. Sec. 2, Ch. 2, L. 1923; amd. Sec. 2, Ch. 218, L. 1939; amd. Sec. 56, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "podiatrist" and "podiatry" for "chiropodist" and "chiropody" throughout the section;

deleted "as defined in this act" after "in any manner" near the end of the first sentence; substituted "board" for "state board of chiropody medical examiners"; and made minor changes in phraseology and punctuation.

**66-603. (3154.3) Examinations schools—fees—nonresident practitioners.** Examinations shall be held semiannually at places and time the board directs. Persons who wish to begin the practice of podiatry in this state, shall make application on a form authorized by the state board of medical examiners and furnished by the department, for a license to practice podiatry. This application shall be granted to applicants after they have furnished satisfactory proof of good moral character, of having attained high school graduation or its equivalent and of having at least two (2) years of instruction in an accredited school of podiatry recognized as being in good standing by the board, but a school of podiatry may not be accredited by the board if it does not require for graduation four (4) years of instruction in the study of podiatry. A license without written examination may be issued to podiatrists of other states maintaining equal statutory requirements for the practice of podiatry and extending the same reciprocal privilege to this state if they have had a valid license for at least two (2) years in that state prior to filing for reciprocal privilege, and by payment of fifty dollars (\$50) to the department.

**History:** En. Sec. 3, Ch. 2, L. 1923; amd. Sec. 3, Ch. 218, L. 1939; amd. Sec. 131, Ch. 147, L. 1963; amd. Sec. 1, Ch. 168, L. 1971; amd. Sec. 1, Ch. 238, L. 1973; amd. Sec. 57, Ch. 350, L. 1974.

#### Amendments

The 1971 amendment deleted "of being at least twenty-one (21) years of age" after "satisfactory proof" in the third sentence of subsection (2); and made minor changes in phraseology and style.

The 1973 amendment changed all references to chiropody to podiatry; changed the name of the state board of chiropody medical examiners to state board of podiatry examiners; increased the number of podiatrists to be selected under the first section of subsection (1) from two to

three; and added the last sentence to subsection (2).

The 1974 amendment deleted a first subsection relating to creation of the board of podiatry examiners; substituted "board" for "state board of podiatry examiners" in two places; substituted "furnished by the department" for "furnished by said state board of medical examiners" in the second sentence; deleted a sentence relating to podiatrists in practice prior to the effective date of the 1939 act; substituted "department" for "secretary of the board of medical examiners" in the final sentence; deleted a sentence relating to substitution of the term podiatrist for the term chiropodist; and made minor changes in phraseology, punctuation and style.

**66-604. (3154.4) Examination—fees.** A person not exempt from examination under section 66-603 and desiring a license to practice podiatry shall be examined in the following subjects: anatomy, chemistry, dermatology, diagnosis, materia medica, pathology, physiology, therapeutics, clinical and orthopedic podiatry, histology, bacteriology, pharmacy, neurology, surgery (minor), podiatry, foot orthopedics, shoe therapy, physiotherapy, roentgenology, hygiene and sanitation, ethics, and culture, limited in their scope to the treatment of the human foot, and, if qualified, shall receive a license. The minimum requirements for a license are a general average of seventy-five per cent (75%) in all the subjects involved, and not less than fifty per cent (50%) in any one subject. An examination and license fee of thirty-five dollars (\$35) shall be paid to the department. An applicant failing in the examination and being refused a license is entitled within six (6) months of the refusal to a re-examination, but one re-examination exhausts his privilege under the original examination.

**History:** En. Sec. 4, Ch. 2, L. 1923; amd. Sec. 4, Ch. 218, L. 1939; amd. Sec. 58, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "podiatry" for "chiropody" throughout the

section; substituted "department" for "secretary of the state board of medical examiners" in the third sentence; and made minor changes in phraseology, punctuation and style.

**66-605. (3154.5) Designation of licensees—renewals—reissuance of license—display of license required—recording necessary.** A license issued under this act shall be designated as a "registered podiatrist's license" and may not contain any abbreviations thereof, nor any other designation or title except that a statement of limitation shall be contained in the license referring to the licensee as a "registered podiatrist—practice limited to the foot," so as not to mislead the public with respect to their right to treat other portions of the body. Licenses shall be recorded by the department the same as other medical licenses. The person receiving the license shall have it recorded in the office of the county clerk in the county in which he resides, and the record shall be endorsed on it. If the person licensed moves to another county to practice, he shall record the license in the same manner in the county into which he moves, and the county clerk is entitled to charge and receive the usual fee for making this record. A renewal license fee of three dollars (\$3) shall be paid annually on July 1 of each year, and if not paid within three (3) months, the license shall be revoked and may be reissued only on original application and payment of a fee of thirty-five dollars (\$35). Licenses shall be conspicuously displayed by podiatrists at their offices or other places of practice.

**History:** En. Sec. 5, Ch. 2, L. 1923; amd. Sec. 5, Ch. 218, L. 1939; amd. Sec. 59, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted refer-

ences to podiatrists for references to chiroprpodists; substituted "department" for "secretary of the state board of medical examiners"; and made minor changes in phraseology, punctuation and style.

**66-606. (3154.6) Refusal or revocation of license.** The board may, after notice and opportunity for a hearing, refuse to grant, renew, or it may revoke a license under this act to a person, otherwise qualified, who obtained the license by fraudulent representation, for incompetency in practice, for use of untruthful or improbable statements to patients or in his advertisements, for habitual intoxication, for unprofessional and immoral conduct, or for selling or giving away alcohol or drugs for an illegal purpose, but the board may authorize the department to reissue a license after six (6) months, if in its judgment the act, acts, or conditions of disqualification have been remedied.

**History:** En. Sec. 6, Ch. 2, L. 1923; amd. Sec. 6, Ch. 218, L. 1939; amd. Sec. 60, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "board" for "state board of chiropody medical ex-

aminers" at the beginning of the section; inserted "notice and opportunity for" before "hearing" near the beginning of the section; inserted "may authorize the department to" before "reissue" near the end of the section; and made minor changes in phraseology and punctuation.

**66-607. (3154.7) Deposit of moneys collected.** Fees and licenses shall be collected by the department and deposited in the earmarked revenue fund for the use of the state board of medical examiners, subject to section 82A-1603(6).



**History:** En. Sec. 7, Ch. 2, L. 1923; amd. Sec. 130, Ch. 147, L. 1963; amd. Sec. 61, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "de-

partment" for "secretary of the state board of medical examiners"; deleted a clause relating to payment of moneys to the state treasurer; added "subject to section 82A-1603 (6)"; and made minor changes in phraseology.

**66-608. (3154.8) Compensation of board—expenses.** Each member of the board, except the physician members, who are otherwise paid for the performance of their duties as medical examiners, shall receive for his services the sum of five dollars (\$5) per diem and necessary traveling and incidental expenses. Other contingent expenses, necessarily incurred, shall be paid by the state department in the same manner as other expenses of the state board of medical examiners.

**History:** En. Sec. 8, Ch. 2, L. 1923; amd. Sec. 132, Ch. 147, L. 1963; amd. Sec. 62, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "board" for "board of examiners" at the beginning of the section; deleted "the secretary" after "except" at the beginning of the

section; deleted "while the secretary shall receive his necessary expenses for services which cannot be performed at the capital" from the end of the first sentence; deleted "All printing, postage and" at the beginning of the second sentence; substituted "department" for "state board of medical examiners" in the second sentence; and made minor changes in phraseology.

## CHAPTER 8—COSMETOLOGY (BEAUTY SHOPS) REGULATION

**Section**

- 66-801. License required to practice or teach cosmetology or operate a beauty shop, cosmetological establishment or school—registration of schools of cosmetology.
- 66-802. Definitions.
- 66-803. Requirements for practicing or teaching cosmetology or operating a school of cosmetology.
- 66-804. [Transferred.]
- 66-805. Meeting—officers to be selected.
- 66-806. Power of board to adopt rules and to approve price agreements.
- 66-807. Registration—licenses.
- 66-808. Examinations.
- 66-809. Compensation of members of board—deposit of receipts in state treasury.
- 66-811. Powers and duties of the board to refuse, revoke, or suspend licenses.
- 66-812. Sanitary rules.
- 66-813. Inspector of beauty parlors.
- 66-813.1. Inspection fees.
- 66-815. Fees.
- 66-816. Duration and renewal of licenses and certificates—delinquent renewal fee.

**66-801. (3228.1) License required to practice or teach cosmetology or operate a beauty shop, cosmetological establishment or school—registration of schools of cosmetology.** No person may practice or teach cosmetology without a license and no place may be used or maintained for the teaching of cosmetology for compensation, except under a certificate of registration, and no person may operate, manage, or conduct a beauty shop or school and teach the art or practice without a manager-operator license. No manager-operator license may be issued unless the applicant has been actively engaged in or teaching the practice of cosmetology in this state for a period of one (1) year preceding the application in addition to possessing the other requirements for a practitioner or teacher of cosmetology. A person, firm, copartnership, or corporation desiring to operate a cosmetological establishment shall make an application to the department of professional

and occupational licensing for a certificate of registration and license. The application shall be accompanied by the annual registration fee. No license may be issued until the inspection fees required in section 66-813.1 have been paid.

**History:** En. Sec. 1, Ch. 104, L. 1929; amd. Sec. 1, Ch. 222, L. 1939; amd. Sec. 1, Ch. 80, L. 1941; amd. Sec. 1, Ch. 211, L. 1945; amd. Sec. 1, Ch. 20, L. 1955; amd. Sec. 1, Ch. 244, L. 1961; amd. Sec. 1, Ch. 85, L. 1974; amd. Sec. 63, Ch. 350, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 85 and once by Ch. 350. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to

conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 85, Laws of 1974, added the last sentence.

Chapter 350, Laws of 1974, substituted "department of professional and occupational licensing" in the third sentence for "board"; and made minor changes in phraseology and punctuation.

**66-802. (3228.2) Definitions.** Unless the context requires otherwise, in this act: (1) "Practice and teaching of cosmetology" includes work generally and usually included in the term "hairdressing" and "beauty culture" and performed in so-called hairdressing and beauty shops, or by itinerant cosmetologists, which work is done for the embellishment, cleanliness, and beautification of the hair, scalp, face, arms, or hands. However, the practice and teaching of cosmetology does not include (1) itinerant cosmetologists who perform their services without compensation for demonstration purposes, in a regularly established store or place of business, holding a license from this state as a store or place of business nor (2) cosmetological artists who demonstrate cosmetological skills under the auspices of the state association of cosmetology or its affiliated units, whether at meetings or in licensed cosmetological establishments.

(2) "Cosmetological establishment" means premises, building, or part of a building in which is practiced a branch or combination of branches of cosmetology, or the occupation of a hairdresser and cosmetician or cosmetologist, and which must have a manager-operator in charge.

(3) "Board" means the board of cosmetologists, provided for in section 82A-1602.8.

(4) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

**History:** En. Sec. 2, Ch. 104, L. 1929; amd. Sec. 2, Ch. 22, L. 1939; amd. Sec. 2, Ch. 20, L. 1955; amd. Sec. 2, Ch. 244, L. 1961; amd. Sec. 1, Ch. 175, L. 1974; amd. Sec. 64, Ch. 350, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 175 and once by Ch. 350. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not

appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 175, Laws of 1974, made minor changes in phraseology.

Chapter 350, Laws of 1974, inserted the introductory sentence; added subdivisions (3) and (4); and made minor changes in phraseology, punctuation and style.

**66-803. (3228.3) Requirements for practicing or teaching cosmetology or operating a school of cosmetology.** (1) Before one may practice or teach cosmetology, or a person, firm, copartnership, or corporation may op-

erate a school of cosmetology, the person, firm, copartnership, or corporation must obtain a license or certificate of registration from the department. To be eligible to take the examination to practice cosmetology the applicant must not be less than eighteen (18) years of age, a graduate of the eighth grade, and of good moral character. The applicant must have completed a continuous course of study of at least two thousand (2,000) hours in a registered beauty school, which course of study has been distributed over a period of not less than ten (10) months or more than fourteen (14) months, and must have received a diploma from the beauty school, or must have completed the course of study in cosmetology prescribed by the board of education. The person qualified must file with the department a written application to take the examination accompanied by a health certificate issued by a registered, licensed physician on a form supplied by the department, and shall deposit with the department the required examination fee and pass an examination as to his fitness to practice cosmetology.

(2) Before an applicant may take an examination to obtain a license as a teacher of cosmetology, he must:

(a) Be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction.

(b) Meet the following requirements:

(i) He must have an operator's license to practice cosmetology issued by the department, been actively engaged as a beauty operator for one (1) continuous year immediately prior to taking the examination, and have received a diploma from a registered school of cosmetology approved by the board certifying satisfactory completion of five hundred (500) hours of student teacher training; or

(ii) He must have been actively engaged as a beauty operator for three (3) continuous years immediately prior to taking the teachers' examination.

(3) The applicant must qualify by filing an application prescribed by the board and by taking and passing the examination prescribed by the board and given by the department, subject to section 82A-1603. The license must be renewed annually under section 66-816.

(4) Anyone failing twice to pass an examination may not apply to retake the examination:

(a) Sooner than six (6) months after the date of the second failure; or

(b) Until he has taken two hundred (200) hours additional teacher training at a registered school of cosmetology approved by the board.

(5) The board may authorize the department to grant to graduates of registered schools of this state on the payment of the fee prescribed by law, a temporary license authorizing the graduates to practice as an operator under the supervision of a licensed cosmetologist, in the practice of hairdressing and beauty culture, for a period of not to exceed ninety (90) days, or until the next examination is held by the department, and the results are announced. No temporary license may be issued except on the



presentation by the applicant of a certificate of graduation from a registered school of this state. The temporary licenses are not renewable.

(6) No person, firm, copartnership, or corporation may operate a school for the purpose of teaching cosmetology for compensation unless a certificate of registration has been first obtained from the department. Application for the certificate shall be filed with the department on a form prescribed by the board.

(7) No teacher or student teacher may be permitted to practice cosmetology on the public in a school. A school that enrolls student teachers for a course of student teacher training may not have at any one time more than one (1) student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

(8) No school for teaching cosmetology may be granted a certificate of registration unless it complies, or can comply, with the following requirements:

(a) Have in its employ a licensed teacher who is, at all times, in the immediate supervision of the work of the school, or other teachers the board determines are necessary for the proper conduct of the school. There may not be more than twenty-five (25) students to each teacher.

(b) It shall possess apparatus and equipment the board determines is necessary for the ready and full teaching of all subjects or practices of cosmetology.

(c) It shall maintain a school term of not less than two thousand (2,000) hours, and shall prescribe a course of practical training and technical instruction equal to the requirements for board examinations, which course of training and technical instruction shall be prescribed by the board.

(d) It shall keep a daily record of the attendance of each student, establish grades, and hold examinations before issuing diplomas.

(e) No owner or person in charge of a school of cosmetology may permit a person to sleep in or use for residential purposes, or any other purpose which would tend to make the room unsanitary, a room used, wholly or in part for a school of cosmetology.

(f) Licenses or certificates of registration may be refused, revoked, or suspended, as provided in section 66-811.

(g) The board may make further rules necessary for the proper conduct of schools of cosmetology.

(h) The board shall require of the person, firm, copartnership, or corporation operating a school to furnish a good and sufficient bond in the amount of five thousand dollars (\$5,000) and in a form and manner prescribed by the board.

(i) No professional beauty shop may be operated in connection with a school of cosmetology.

(j) The board may, by rule, establish suitable curriculum for teachers' training in registered schools of cosmetology.

(9) If a licensee contracts a communicable disease, endangering the public health, the board shall, on proof of it, cancel or suspend his license

until the licensee can secure a physician's certificate showing that he is free from a communicable disease.

**History:** En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974.

#### Compiler's Notes

This section was amended twice in 1973, once by Ch. 268 and once by Ch. 310. Neither amendatory act mentioned nor incorporated the changes made by the other. The compiler has made a composite section embodying the changes made by both amendments which do not appear to conflict. In so far as the amendments appear to conflict with respect to the amount of the fee for a temporary license, the compiler has used the text of Ch. 310, the later in time of enactment.

#### Amendments

The 1971 amendment deleted a requirement that an applicant for a license "Be twenty-one (21) years of age or older."

Chapter 268, Laws of 1973 increased the fee for a temporary license pending examination from two dollars to four dollars and added "and the results are announced"

at the end of the first sentence of subsection (5).

Chapter 310, Laws of 1973, extended the maximum length of a beauty school course from twelve to fourteen months in subsection (1); substituted "the fee prescribed by law" for "a fee of two dollars" in the first sentence of subsection (5); deleted "extending over a period of ten (10) consecutive months" following "two thousand (2,000) hours" in subdivision (8)(c); and inserted "Licenses or" at the beginning of subdivision (8)(f).

The 1974 amendment inserted the numerical subsection designations and revised the numbering of subdivisions accordingly; substituted references to department throughout the section for references to state board; substituted "board of education" in the third sentence of subsection (1) for "state board of education, ex officio regents of the university of Montana, for the northern Montana college"; substituted "department" for "state of Montana" in subdivision (2)(b)(i); substituted "given by the department, subject to section 82A-1603" in subsection (3) for "given by the board"; substituted "board may authorize the department to grant" in subsection (5) for "board may grant"; and made minor changes in phraseology, punctuation and style.

### 66-804. [Transferred.]

#### Compiler's Notes

Section 66-804 was redesignated as sec-

tion 82A-1602.8 and amended by Sec. 1, Ch. 196, Laws 1973.

**66-805. (3228.5) Meeting—officers to be selected.** The board shall annually, before March 1, elect from its number a president, vice-president, and secretary-treasurer.

**History:** En. Sec. 5, Ch. 104, L. 1929; amd. Sec. 5, Ch. 222, L. 1939; amd. Sec. 66, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "The

board shall annually, before March 1"; for "The state board shall annually, on or before the first of March"; and made minor changes in phraseology.

**66-806. (3228.6) Power of board to adopt rules and to approve price agreements.** (1) The board may approve price agreements among licensed practitioners and students in beauty schools, by which minimum prices for hairdressing and beauty culture are established by explicit written agreement signed and executed by at least seventy-five per cent (75%) of the practitioners in a county in this state, and submitted to the board by the signing group over their signatures of all thereof. Beauty schools shall charge for students' work not less than fifty per cent (50%) of the established minimum prices, as determined and approved by seventy-five per cent (75%) of the practitioners in the area. On receipt of the price

agreements, the board shall investigate the reasons for it and the justification for the agreement. If the board, in its discretion, concludes that the price agreement is just and under the conditions obtaining for the particular territory involved, will best protect the public health and safety by affording a sufficient minimum price for hairdressing and beauty culture to enable the practitioners to furnish modern and healthful services, and appliances to minimize danger to the public health, the board may approve the agreements for the term proposed or for a shorter term as the board considers proper.

(2) The board may also consider separately the petition of an incorporated town or city, when accompanied by the signatures of at least two-thirds ( $2/3$ ) of the licensed practitioners in the town or city and the board may approve, if necessary, according to the purpose of this chapter, changes in existing price agreements or establish new agreements, when approved by seventy-five per cent (75%) of the licensed practitioners within the town or city. Other communities and territory adjacent to a town or city and other areas in the county shall abide by the rules and agreements prescribed for that particular county. For the purpose of this subsection, a city or town includes, in addition to the territory lying within its legal boundaries, the territory adjacent to it and lying within three (3) miles of the legal boundaries, in any direction.

(3) In determining whether a price agreement is necessary and just, and will protect the public health and safety, the board shall give consideration to all conditions affecting hairdressing and the beauty culture art, as practiced, in its relation to public health and safety, and also to the necessary costs incurred in the particular territorial area in maintaining shops or parlors in sanitary and attractive condition. The board shall, on its own initiative, request the department to, and the department shall investigate conditions existing in the practice of cosmetology throughout the state, and shall establish new or modify existing minimum prices when it appears that this action is in the best interests of public health and safety and in keeping with the purposes and objectives of this act. In no event may a minimum price agreement or standard be established, approved, modified, or abolished, except after public hearing. Notice of the hearing and the purpose, time, and place thereof shall be mailed by the department to every licensed practitioner in the area affected, as it appears in the records of the department, and it shall be published at least once in a newspaper of general circulation which the board considers most likely to give notice to the public, the mailing and publication to be done not less than ten (10) days prior to the hearing.

(4) The price agreement, as proposed or modified by the board, shall be put into effect by order of the board, which shall plainly state the minimum price for all work usually performed in a beauty shop or parlor in the county, city, or town in which the price agreement has been signed, and for which it is effective, and thereafter no person subject to this act may advertise or sell service for less than the minimum price in the area for which the price was established. If the board either on petition of two-thirds ( $2/3$ ) of the signatories to the price agreement, or on the board's



initial motion, finds that the minimum prices fixed by its order are insufficient or improperly adjusted to provide healthful services to the public and keep the shops and parlors in a safe, sanitary, and attractive condition, it may modify the minimum prices by prescribing increases, adjustments, or decreases, if necessary, best calculated to realize the objectives.

(5) The board shall prescribe rules for the conduct of its business; the qualification, examination, and registration of applicants to practice or teach cosmetology; applicants for manager-operator licenses; the regulation and instruction of apprentices and students; the conduct of schools of cosmetology for apprentices and students; and generally for the conduct of the persons, firms, or corporations affected by this act.

(6) The board shall adopt a seal and authenticate its acts.

**History:** En. Sec. 6, Ch. 104, L. 1929; amd. Sec. 2, Ch. 80, L. 1941; amd. Sec. 5, Ch. 244, L. 1961; amd. Sec. 67, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "board" at the beginning of subsection (1) for "Montana state examining board of beauty

culturists [cosmetology]"; substituted "chapter" in the first sentence of subsection (2) for "act"; inserted "request the department to, and the department shall" near the beginning of the second sentence of subsection (3); added subsection (6); and made minor changes in style, punctuation and phraseology.

**66-807. (3228.7) Registration—licenses.** If the board finds that an applicant for examination, or for certificate of registration, has complied with the requirements of this act and has paid the required fee, the board shall admit the applicant to examination and shall authorize the department to issue a license or certificate of registration to those who have successfully passed the examination or are entitled to the certificate of registration under this act.

**History:** En. Sec. 7, Ch. 104, L. 1929; amd. Sec. 6, Ch. 222, L. 1939; amd. Sec. 68, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment inserted "authorize the department to" before "issue" near the middle of the section; and made minor changes in phraseology.

**66-808. (3228.8) Examinations.** (1) Examinations for operator's license shall be held at least two (2) times a year and not more than five (5) times a year and for teacher's license once each year, at a place and time specified by the board. The examinations shall be conducted by the department, subject to section 82A-1603. The examinations may not be confined to a specific method or system.

(2) Physically handicapped persons trained for cosmetology by the department of social and rehabilitation services shall, for a period of one (1) year immediately following their graduation, be exempt from the examination and the fees described in section 66-815. On certification from the department of social and rehabilitation services that a department of social and rehabilitation services beneficiary has successfully completed the required apprenticeship or training in a shop or beauty school, the department shall issue the person the necessary certificate or license to practice the profession in this state.

**History:** En. Sec. 8, Ch. 104, L. 1929; Ch. 222, L. 1939; amd. Sec. 69, Ch. 350, L. amd. Sec. 1, Ch. 85, L. 1935; amd. Sec. 7, 1974.

**Amendments**

The 1974 amendment substituted "conducted by the department, subject to section 82A-1603" in the second sentence of subsection (1) for "conducted by said state board or by examiners appointed by a majority of said board for such purpose"; deleted a former third sentence from sub-

section (1) relating to the qualifications of examiners; substituted references to the department of social and rehabilitation services in subsection (2) for references to the state bureau of vocational rehabilitation; and made minor changes in phraseology, punctuation and style.

**66-809. (3228.9) Compensation of members of board—deposit of receipts in state treasury.** Each member of the board shall receive, as compensation for his services, the sum of twenty-five dollars (\$25) per day for each day in actual attendance at any meeting at the board. In addition, each member shall be reimbursed for his expenses necessarily incurred in the performance of his duties. All fees collected by the department under this act, shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

**History:** En. Sec. 9, Ch. 104, L. 1929; amd. Sec. 8, Ch. 222, L. 1939; amd. Sec. 135, Ch. 147, L. 1963; amd. Sec. 1, Ch. 133, L. 1967; amd. Sec. 1, Ch. 224, L. 1974; amd. Sec. 70, Ch. 350, L. 1974.

**Compiler's Notes**

This section was amended twice in 1974, once by Ch. 224 and once by Ch. 350. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

**66-811. (3228.11) Powers and duties of the board to refuse, revoke, or suspend licenses.** The board may refuse to issue, refuse to renew, or may revoke, or suspend a license in any one of the following cases: (1) Failure of a person, firm, copartnership, or corporation operating a cosmetological establishment or school of cosmetology to comply with this act; (2) failure to comply with the sanitary rules, adopted by the board and approved by the department of health and environmental sciences, for the regulation of cosmetological establishments or schools of cosmetology; (3) gross malpractice; (4) continued practice by a person knowingly having an infectious or contagious disease; (5) habitual drunkenness, or habitual addiction to the use of morphine or any habit-forming drugs; (6) permitting a certificate of registration or license to be used where the holder is not personally, actively, and continuously engaged in business; or (7) failure to display the license. However, the board may not refuse to authorize the department to issue or renew a license, or revoke or suspend a license already issued, until after notice and opportunity for a hearing.

**History:** En. Sec. 11, Ch. 104, L. 1929; amd. Sec. 10, Ch. 222, L. 1939; amd. Sec. 71, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "department of health and environmental sciences" in item (2) of the first sentence

**Amendments**

Chapter 224, Laws of 1974, increased the daily compensation for attendance of board members from \$20 to \$25; and made minor changes in phraseology.

Chapter 350, Laws of 1974, inserted "subject to section 82A-1603 (6)" in the last sentence; deleted three sentences relating to compensation of the secretary of the board and its examiners, and expenses of board members; and made minor changes in phraseology and punctuation.

for "state board of health"; substituted the last sentence of the section for a proviso prohibiting denial or suspension of a license without ten days' notice; deleted provisions describing adequate notice and a party's right to bring a civil action against the board; and made minor changes in phraseology, punctuation and style.

**66-812. (3228.12) Sanitary rules.** The board, subject to the approval of the department of health and environmental sciences, shall prescribe sanitary rules it considers necessary, with particular reference to the precautions necessary to be employed to prevent the creating and spread of infectious and contagious diseases.

**History:** En. Sec. 12, Ch. 104, L. 1929; amd. Sec. 72, Ch. 350, L. 1974.

partment of health and environmental sciences" for "state board of health"; and made minor changes in phraseology.

**Amendments**

The 1974 amendment substituted "de-

**66-813. (3228.13) Inspector of beauty parlors.** The department shall appoint one (1) or more inspectors who are licensed to practice under this act, each of whom shall devote his time to inspecting beauty parlors and performing other duties as the department may direct. The inspectors may enter a beauty parlor or school of cosmetology during business hours for the purpose of inspection, and the refusal of a licensee to permit the inspection during business hours is cause for revocation of the license.

**History:** En. Sec. 13, Ch. 104, L. 1929; amd. Sec. 11, Ch. 222, L. 1939; amd. Sec. 73, Ch. 350, L. 1974.

ences to the department for references to the state board of health; deleted a sentence relating to compensation of inspectors; and made minor changes in phraseology.

**Amendments**

The 1974 amendment substituted refer-

**66-813.1. Inspection fees.** Upon application for a license, any cosmetological establishment must pay an initial inspection fee of twenty-five dollars (\$25), plus actual and necessary expenses of the inspector. This inspection is required prior to issuance of a license.

**History:** En. 66-813.1 by Sec. 2, Ch. 85, L. 1974.

quired for initial inspection prior to licensure of beauty salons and beauty colleges by amending section 66-801, R. C. M. 1947.

**Title of Act**

An act providing that a fee shall be re-

**66-815. (3228.15) Fees.** Fees for licenses and certificates of registration shall be paid to the department not to exceed the following respective amounts prescribed by the board. (1) A student enrolling in a registered cosmetology school shall pay a registration fee of three dollars and fifty cents (\$3.50) to the department.

(2) An applicant for examination to practice shall pay at the time of the application a fee of twenty dollars (\$20).

(3) An applicant for examination who is a graduate from a cosmetology school of this state may pay a fee of four dollars (\$4) for a temporary license to practice as an operator.

(4) An applicant for examination to teach shall pay at the time of the application a fee of thirty dollars (\$30).

(5) A person practicing cosmetology as an operator shall pay a fee of six dollars (\$6) for the issuance of a license.

(6) An applicant for a manager-operator license shall pay a fee of ten dollars (\$10) for the issuance of a license.



(7) An applicant for an itinerant license as a cosmetologist shall pay a fee of fifty dollars (\$50).

(8) A person, firm, copartnership, or corporation owning, operating, or conducting a cosmetological salon shall pay the sum of ten dollars (\$10) for the issuance of the certificate of registration.

(9) A person teaching or instructing cosmetology shall pay a fee of ten dollars (\$10) for the issuance of a license.

(10) A person, firm, copartnership, or corporation owning, operating, or conducting a school of cosmetology shall pay the sum of fifty dollars (\$50) for a certificate of registration.

(11) A person, firm, copartnership, or corporation owning, operating, or conducting an advanced school of cosmetology shall pay the sum of fifty dollars (\$50) for a certificate of registration.

(12) A person, firm, copartnership, or corporation owning, operating, or conducting a teacher-training unit in a school of cosmetology shall pay the sum of fifty dollars (\$50) for a certificate of registration.

(13) Duplicate licenses or certificates of registration shall be issued on payment of two dollars (\$2) and proof of necessity. The license and registration fees shall be paid annually in advance to the department. No other or additional license or registration fee may be imposed by a municipal corporation or other political subdivision of this state for the practice or teaching of cosmetology.

**History:** En. Sec. 15, Ch. 104, L. 1929; amd. Sec. 12, Ch. 222, L. 1939; amd. Sec. 3, Ch. 80, L. 1941; amd. Sec. 3, Ch. 20, L. 1955; amd. Sec. 2, Ch. 140, L. 1959; amd. [Sec. 1,] Ch. 131, L. 1963; amd. [Sec. 1,] Ch. 324, L. 1971; amd. Sec. 74, Ch. 350, L. 1974.

#### **Amendments**

The 1971 amendment substantially re-

wrote this section and generally increased the fees. For previous text, see parent volume.

The 1974 amendment inserted the numerical subdivision designations; substituted "department" for "Montana state examining board of cosmetology" throughout the section; and made minor changes in phraseology and punctuation.

**66-816. (3228.16) Duration and renewal of licenses and certificates—delinquent renewal fee.** (1) Licenses and certificates shall be issued for no longer than one (1) year. Licenses and certificates expire on December 31 unless renewed for the next year. Licenses and certificates may be renewed by application made prior to December 31 of each year, and the payment of a required renewal fee. Expired licenses and certificates may be renewed under rules made by the board.

(2) In addition to the foregoing requirements for renewal, persons applying for the renewal of teachers' licenses must have fulfilled the following additional requirements:

(a) During each year an active teacher, either full time or part time, must have successfully completed thirty (30) hours professional teacher training at a school approved by the board as a prerequisite to the renewal of the teacher's license.

(b) Persons holding a teacher's license, but not actively engaged either full time or part time in teaching cosmetology during the preceding year, may renew the license by paying the required fee.

(c) Persons holding a teacher's license but not actively engaged in teaching cosmetology either full time or part time for the preceding year or longer and wishing to resume active teaching of cosmetology must successfully complete thirty (30) hours professional teachers' training at a school approved by the board before resuming active teachers' training. However, the foregoing provisions do not prevent the board, under rules it adopts from permitting a person holding a teacher's license and not actively engaged either full time or part time in teaching cosmetology from teaching as a substitute for an active teacher.

(3) A fee of two dollars and fifty cents (\$2.50) shall be charged in addition to other fees fixed by law for renewal applications of licenses and certificates made after December 31 of each year. The department shall notify license holders of the expiration date of license not less than thirty (30) days before the expiration date, and call attention to the penalty imposed for failure to renew license by the date of expiration.

History: En. Sec. 16, Ch. 104, L. 1929; amd. Sec. 13, Ch. 222, L. 1939; amd. Sec. 1, Ch. 115, L. 1961; amd. Sec. 1, Ch. 132, L. 1967; amd. Sec. 75, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "board" in subsection (3); and made minor changes in phraseology, punctuation and style.

## CHAPTER 9—DENTISTRY—REGULATION OF PRACTICE

### Section

- 66-901. [Transferred.]
- 66-904. Meetings—notice—quorum—funds—duties—report.
- 66-905. Dentistry examinations—application—contents—fees—undergraduate examination—regulations for examinations—notice—scope of examination—dentist certificates—fee—form—retention and inspection of examination papers.
- 66-906. Certificate to be registered in counties where practicing—replacing lost certificates—admission of dentists from other states—reciprocity—annual license fee—inactive fee—due date of annual fee—revocation of license for failure to pay.
- 66-908. Failure to register certificate as prima facie proof of lack of authority to practice dentistry.
- 66-909. Compensation and expenses allowed board members—limitation on duration of examination meetings—disbursement of funds.
- 66-910. Practice of dentistry defined—persons conducting business through licensed dentist—exceptions.
- 66-911. Duty of county attorney to enforce act—attorney general's duty on appeal—jurisdiction of justice courts—injunction.
- 66-913. Revocation or suspension of license—grounds—conviction of crime—renting or loaning license—unprofessional conduct—proceedings for revocation or suspension.
- 66-919. Practicing dentistry without certificate, penalty for—disposition of fines.
- 66-920. Affiliation with national association authorized—delegate—expenses allowed.
- 66-921. Dental hygiene defined—dental hygienists—qualifications—examination—fee—registration—certificate form—re-examination—powers and limitations—revocation of license.
- 66-922. Annual license fee for dental hygienists—revocation of license.
- 66-923. Admission of dental hygienists from other states—unlawful to practice without license—licenses for practicing hygienists—reciprocity.

### 66-901. [Transferred.]

#### Compiler's Notes

Section 76, Ch. 350, Laws of 1974 re-numbered this section as sec. 82A-1602.9.

**66-901.1. Definitions.** Unless the context requires otherwise, in this act:

(1) "Board" means the board of dentists, provided for in section 82A-1602.9.

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. 66-901.1 by Sec. 77, Ch. 350, L. 1974.

**66-902. (3115.2) Repealed.**

**Repeal**

Section 66-902 (Sec. 2, Ch. 48, L. 1935), relating to oath of office and removal of

members, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-904. (3115.4) Meetings—notice—quorum—funds—duties—report.**

(1) The board shall meet at least once each year in this state at the call of the president and secretary-treasurer. Five (5) days' notice must be given by the department to board members of the time and place of the meeting of the board. Three (3) members of the board constitute a quorum for the transaction of business. Its proceedings are open to public inspection in cases of public interest. Money collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

(2) The department shall keep a complete record of meetings and proceedings of the board, and shall keep a complete account of moneys received and disbursements made by the department.

History: En. Sec. 4, Ch. 48, L. 1935; amd. Sec. 147, Ch. 147, L. 1963; amd. Sec. 25, Ch. 177, L. 1965; amd. Sec. 21, Ch. 93, L. 1969; amd. Sec. 1, Ch. 352, L. 1969; amd. Sec. 78, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted refer-

ences to the department for references to the board and the secretary-treasurer of the board; added "subject to section 82A-1603(6)" to the end of the last sentence of subsection (1); deleted provisions pertaining to reports by the board; and made minor changes in phraseology, punctuation and style.

**66-905. (3115.5) Dentistry examinations—application—contents—fees—undergraduate examination—regulations for examinations—notice—scope of examination—dentist certificates—fee—form—retention and inspection of examination papers.** (1) A person desiring to practice dentistry in this state shall file in his full name, an application for examination with the department at least twenty (20) days before the date set by the board for the commencement of the examination. At the time of making the application the applicant shall (a) pay to the department a fee of fifty dollars (\$50), furnish the department with at least three (3) affidavits of good moral character satisfactory to the board, present to the department his diploma or satisfactory evidence of having graduated from a recognized dental school or college, which has been approved by the board, and furnish the department a recent photograph of the applicant.

(2) The board may, in its discretion, permit a dental student who has successfully completed his junior year in a recognized dental school, and who files proof satisfactory to the board that he has the preliminary edu-



cation described in this section, to take a written examination in the subjects he has completed, and satisfactory grades secured shall be credited on the final examination of the student. The board shall require a fee of fifty dollars (\$50) for this examination, which shall apply on the final examination taken by the applicant.

(3) The board shall make rules governing examinations for a license to practice dentistry in this state. The examinations are open to an applicant meeting the requirements of this act. The board shall also provide, by rule, reasonable notice of the time and place where examinations are held. An examination shall be held at least once a year.

(4) The examination shall be practical in character and sufficiently thorough to test the fitness of the applicant to practice dentistry. It shall include, written in the English language, questions on anatomy, histology, physiology, chemistry, pharmacology and therapeutics, metallurgy, pathology, bacteriology, anesthesia, operative and surgical dentistry, prosthetic dentistry, prophylaxis, orthodontics and endodontics, and any additional subjects pertaining to dental service. The written examination may be supplemented by oral examinations. Demonstrations of the applicant's skill in operative and prosthetic dentistry is also required. The examination shall be conducted under oath or affirmation by the department, subject to section 82A-1603, and any member of the board may administer the oath or affirmation. The board may recognize a certificate granted by the national board of dental examiners instead of, or subject to the examinations the board requires.

(5) Applicants successfully passing the examination shall be registered as licensed dentists in the department register and, on payment of an additional fifteen dollars (\$15) shall receive a certificate signed by the members of the board, in a form prescribed by the board.

(6) Examination papers of an applicant shall be retained two (2) years by the department and may then be destroyed, and while so retained are open to inspection only by board members, the applicant, some person appointed by the applicant to examine them, or by a court of competent jurisdiction in a proceeding where the question of the contents of the papers is properly involved.

(7) An applicant failing to pass his first examination, if otherwise qualified, may take subsequent examinations on payment of the fee of twenty-five dollars (\$25) for each examination.

**History:** En. Sec. 5, Ch. 48, L. 1935; amd. Sec. 1, Ch. 38, L. 1941; amd. Sec. 1, Ch. 34, L. 1961; amd. Sec. 2, Ch. 352, L. 1969; amd. Sec. 1, Ch. 287, L. 1971; amd. Sec. 79, Ch. 350, L. 1974.

#### Amendments

The 1971 amendment deleted original subsection (6), which prohibited licensing of a person who was not a United States citizen, and redesignated original subsection (7) as subsection (6). (See parent volume.)

The 1974 amendment substituted refer-

ences to the "department" for references to the "secretary-treasurer of the board of dental examiners" and "board" throughout the section; inserted "subject to section 82A-1603" near the end of subsection (4) after "department"; substituted "in a form prescribed by the board" at the end of subsection (5) for a paragraph containing the form (see parent volume); redesignated the last paragraph of subsection (5) as subsection (6); redesignated former subsection (6) as subsection (7); and made numerous minor changes in punctuation and phraseology.

**66-906. (3115.6) Certificate to be registered in counties where practicing—replacing lost certificates—admission of dentists from other states—reciprocity—annual license fee—inactive fee—due date of annual fee—revocation of license for failure to pay.** (1) The certificate under this act entitles the holder to practice dentistry in any county in this state, if the certificate is first filed for registration and registered in the office of the county recorder of the county in which the holder desires to practice. This act does not permit a holder of a certificate to practice in a county in this state unless the certificate has been first registered in the office of the recorder of the county. A holder of a certificate may practice in more than one (1) or in any number of counties in this state on having the certificate registered in each of the counties in which the holder desires to practice. The department shall, on proof satisfactory to the board of the loss of a certificate issued under this act, issue a duplicate certificate, and a fee of ten dollars (\$10) shall be charged for issuing the certificate.

(2) A dentist who has been lawfully licensed to practice in another state or territory which has and maintains a standard for the practice of dentistry or dental surgery which in the opinion of the board is equal to that at the time maintained in this state; who is a graduate of an accredited four (4) year high school or has actual scholastic credits equivalent to a four (4) year high school course; who is a graduate of a recognized dental school or college; who has been lawfully and continuously engaged in the practice of dentistry for five (5) years or more immediately before filing his application to practice in this state; and who deposits in person with the department an attested certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and of his being a person of good moral character and of professional attainments, may, on the payment of a fee of fifty dollars (\$50) and after satisfactory practical examination demonstrating his proficiency, be granted a license to practice dentistry in this state, without being required to take an examination in theory. However, no license may be issued without an examination in theory to an applicant, unless the state or territory from which the certificate has been granted to the applicant extends a like privilege to engage in the practice of dentistry to dentists licensed by this state, who move to the other state. The board may enter into reciprocal relations with similar boards of other states whose laws are practically identical with this act.

(3) A licensed dentist practicing within this state shall annually pay before March 1, to the department, as a license fee for the year, the sum of ten dollars (\$10). The board may increase or decrease the annual license fee to maintain in the earmarked fund, at all times, an amount to be known as the emergency fund to be used for the purpose of administering, policing, and enforcing this act. The emergency fund shall be maintained at an approximate level of two thousand five hundred dollars (\$2,500). Notice of the change in the amount of license fees shall be given to each dentist registered in this state by the department.

(4) If a registered dentist absents himself from the state for a period of one (1) or more years, or does not engage in active practice within

this state, he may continue his license in good standing by the payment of ten dollars (\$10) each year, or at the discretion of the board, he may be reinstated on the payment of a fee of ten dollars (\$10) for each year's absence. The annual payments shall be made prior to March 1 of each year, and a receipt or certificate shall be issued by the department.

(5) In case of default in payment of the annual license fee by a dentist, his license shall be revoked by the board on thirty (30) days' notice given to the delinquent of the time and place of considering the revocation. A registered letter addressed to the last known address of the party failing to comply with this requirement, as the address appears on the records of the department constitutes sufficient notice of revocation of license, but no license may be revoked for nonpayment if the dentist notified pays the license fee plus a late payment penalty of three dollars (\$3) before or at the time fixed for consideration of revocation. The department may maintain in the name of this state a suit to collect license fees and penalties applicable and to recover from the delinquent dentist the cost of the action, including reasonable attorneys' fees.

(6) No license fee or tax may be imposed on dentists by a municipality or any other subdivision of the state.

**History:** En. Sec. 6, Ch. 48, L. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted references to the "department" for references

to the "secretary-treasurer of the board of dental examiners" and "board" throughout the section; substituted "before March 1" in subsection (3) for "on or before the first day of March"; and made minor changes in phraseology, punctuation and style.

**66-908. (3115.8) Failure to register certificate as prima facie proof of lack of authority to practice dentistry.** In a prosecution for a misdemeanor under this act the certificate of the county recorder of the county in which the misdemeanor is alleged to have been committed, to the effect that there has been no certificate of the department, filed and registered in the county recorder's office issued under this act to the person accused of the misdemeanor, is prima facie proof that the person is not entitled to practice dentistry in the county.

**History:** En. Sec. 8, Ch. 48, L. 1935; amd. Sec. 81, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "board of dental examiners"; and made minor changes in phraseology, punctuation and style.

**66-909. (3115.9) Compensation and expenses allowed board members—limitation on duration of examination meetings—disbursement of funds.**

(1) Out of the funds derived from fees and dues collected under this act each member of the board shall be reimbursed as follows:

(a) Fifteen dollars (\$15) per day for each day traveling to and from a meeting and while in actual attendance at a meeting of the board and for each day actually engaged in the duties of his office.

(b) Expenses and travel authorized under sections 59-538 and 59-801.

(c) For first class railroad and Pullman fares actually incurred to and from his place of residence to the place of a meeting.



(2) Meetings held for the purpose of examining candidates for a license to practice dentistry in this state may not exceed six (6) days.

(3) Money collected in excess of expenses and salaries provided for shall be held by the department as a special fund for meeting the expenses of the board, the proper administration of this act and for educational purposes considered wise by the board. The department, on the written request of the board, shall set aside in a separate account in the earmarked revenue fund, the emergency moneys provided under section 66-906. This account may be expended only when the board determines that an emergency exists requiring an expenditure therefrom.

History: En. Sec. 9, Ch. 48, L. 1935; amd. Sec. 149, Ch. 147, L. 1963; amd. Sec. 4, Ch. 352, L. 1969; amd. Sec. 82, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment deleted a former third sentence from subsection (3) permitting the board to employ special counsel; deleted a former fourth sentence from subsection (3) relating to compensation of the

secretary-treasurer of the board; substituted "department" for "secretary-treasurer of the board" in the first sentence of subsection (3) and for "state treasurer and state controller" in the second sentence of subsection (3); deleted a former last sentence from subsection (3) relating to drawing on the earmarked fund for emergency expenses; and made minor changes in phraseology, punctuation and style. For prior version, see parent volume.

**66-910. (3115.10) Practice of dentistry defined—persons conducting business through licensed dentist—exceptions.** (1) A person is practicing dentistry under this act if he performs, attempts, advertises to perform, causes to be performed by the patient or any other person, or instructs in the performance of dental operations, oral surgery, or dental service of any kind gratuitously or for a salary, fee, money, or other remuneration paid, or to be paid, directly or indirectly, to himself, any other person, or agency; is a manager, proprietor, operator, or conductor of a place where dental operations, oral surgery, or dental services are performed; directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces, or repairs a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth; places the appliance or structure in the human mouth, or attempts to adjust it; advertises to the public, by any method, to furnish, supply, construct, reproduce, or repair a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth; diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structure; extracts or attempts to extract human teeth, or corrects, attempts, or professes to correct malpositions of teeth or of the jaw; gives, or professes to give interpretations or readings of dental roentgenograms; administers an anesthetic of any nature in connection with a dental operation; uses the words "dentist," "dental surgeon," "oral surgeon," the letters "D.D.S.," "D.M.D.," or any other words, letters, title, or descriptive matter which in any way represent him as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures; states, advertises, or permits to be stated or advertised, by sign, card, circular, handbill, newspaper, radio, or otherwise, that he can perform or will attempt to

perform dental operations or render a diagnosis in connection therewith; or engages in any of the practices included in the curricula of recognized dental colleges.

(2) A dental laboratory or dental technician is not practicing dentistry under this act when engaged in the construction, making, alteration, or repairing of bridges, crowns, dentures, or other prosthetic appliances, surgical appliances, or orthodontic appliances if the casts, models, or impressions on which the work is constructed have been made by a regularly licensed and practicing dentist, and the crowns, bridges, dentures, prosthetic appliances, surgical appliances, or orthodontic appliances are returned to the dentist on whose order the work was constructed.

(3) A licensed dentist who employs or engages the services of a person, firm, or corporation to construct, reproduce, make, alter, or repair bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances, shall furnish the person, firm, or corporation with a written work authorization on forms prescribed by the board which shall contain: (a) the name and address of the person, firm, or corporation to which the work authorization is directed; (b) the patient's name or identification number, but if only a number is used the patient's name shall be written on the duplicate copy of the work authorization retained by the dentist; (c) the date on which the work authorization was written; (d) a description of the work to be done, including diagrams, if necessary; (e) a specification of the type and quality of the materials to be used; and (f) the signature of the dentist and the number of his license to practice dentistry. The person, firm, or corporation receiving a work authorization from a licensed dentist shall retain the original work authorization and the dentist shall retain the duplicate copy for inspection at a reasonable time by the board for a period of two (2) years from date of issuance.

(4) This section does not apply to a legally qualified physician or surgeon or to a dental surgeon of the United States army, navy, public health service, or veterans' bureau, or to a legal practitioner of another state making a clinical demonstration before a dental society, convention, or association of dentists, or to a licensed dental hygienist performing an act authorized under section 66-921.

(5) No person, firm, or corporation engaged in the business of constructing, altering, or repairing bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances may advertise the services, technique, or materials to the general public by means of advertisements in public newspapers, magazines, or by radio, television, display advertisements, or by any other means except advertisements in professional or trade papers, trade journals, trade directories, trade periodicals, trade magazines, and listings in business and telephone directories limited to name, address, and telephone number, which may not occupy more than the number of lines necessary to disclose the information; nor may a person, firm, or corporation so engaged in any way directly solicit the patronage of the general public.

History: En. Sec. 10, Ch. 48, L. 1935; Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, 1969; amd. Sec. 83, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "board" for "state board of dental examiners" in two places in subsection (3); and made minor changes in phraseology, punctuation and style.

**66-911. (3115.11) Duty of county attorney to enforce act—attorney general's duty on appeal—jurisdiction of justice courts—injunction.** The county attorney of the county in which an offense is alleged to have occurred shall attend to the prosecution of complaints made under this act, both on trial in the justice court where the complaint is made, and also on hearing in the district court, either on the complaint, or on information or indictment filed against a person under this act in the district court. This act does not prevent the prosecution of a person for violation of this act on the information of the county attorney directly. Justice courts have original concurrent jurisdiction of misdemeanors committed under this act. If a person, firm, or corporation engages in the practice of dentistry without possessing a valid license or violates this chapter, the attorney general, a county attorney, or the board may maintain an action in the name of this state to enjoin the person, firm, or corporation from engaging in the practice of dentistry or otherwise violating this act. The injunction does not relieve criminal prosecution, but the remedy by injunction is in addition to the liability of the offender to criminal prosecution.

**History:** En. Sec. 11, Ch. 48, L. 1935; amd. Sec. 4, Ch. 34, L. 1961; amd. Sec. 84, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment deleted a sentence relating to the state attorney general's

duty to attend to the appeal of criminal cases; substituted "this chapter" for "this act" and "board" for "state board of dental examiners" in the next-to-last sentence; and made minor changes in phraseology, punctuation and style.

**66-913. (3115.13) Revocation or suspension of license—grounds—conviction of crime—renting or loaning license—unprofessional conduct—proceedings for revocation or suspension.** (1) A dentist may have his license revoked or suspended by the board for any of the following reasons:

(a) Conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction or a copy certified by the clerk of the court or by the judge in whose court the conviction is had is conclusive evidence.

(b) For renting, loaning, or attempting to rent or loan to a person his license for the practice of dentistry or his diploma of graduation from a dental college, school, or course to be used as a license or diploma of the person.

(c) For permitting a dental hygienist, under his personal supervision to do an act or perform an operation other than those defined and authorized under section 66-921.

(d) For permitting unlicensed auxiliary personnel to perform duties or tasks other than those which may be specifically authorized by the board.

(e) For unprofessional conduct, gross ignorance or inefficiency in his profession, habitual intemperance, or gross immorality.

(2) Unprofessional conduct consists of employing what are known as "cappers" or "steerers" to obtain business; obtaining a fee by fraud or



misrepresentation; willfully betraying professional secrets; employing, directly or indirectly, a student or a suspended or unlicensed dentist to perform operations in the practice of dentistry, treat lesions of the human teeth or jaws, or correct malimposed formations; making use of advertising statements of a character tending to deceive or mislead the public; advertising prices; advertising professional superiority, or performance of professional services in a superior manner; advertising by means of a large display, glaring light sign, or other sign or device containing the representation of a tooth, teeth, bridgework, or a portion of the human head; advertising over television or radio; employing or making use of advertising solicitors or publicity press agents; advertising free dental work or free examination; advertising to guarantee dental service or to perform a dental operation painlessly; advertising by sign or printed advertisements under the name of a corporation, company, association, or trade name.

(3) Proceedings under this section may be taken by the board on its initial motion, for matters in its knowledge, or may be taken on the information of another. However, if the informant is a member of the board, the other members of the board constitute the board for the purpose of determining the truth of the charge or accusation. Accusations must be in writing, verified by some party familiar with the facts charged, and three (3) copies must be filed with the department. On receiving the accusation the board shall, if it considers the accusation sufficient, make an order setting it for hearing, and requiring the accused to appear and answer the charge or accusation at the hearing.

(4) The accused must appear at the time appointed in the order and answer the charges and make his defense unless for sufficient cause, on the accused's application or the board's order, the board assigns another day for that purpose.

(5) If the accused does not appear the board may proceed and determine the accusation in his absence. If the accused confesses the accusation or refuses to answer the charge, or if on hearing the board finds the charge or accusation true, it may make an order either revoking the license of the accused or suspending it for a fixed period. The board and the accused may have the benefit of counsel, and the board shall have the power to administer oaths, take depositions of witnesses in the manner provided by law in civil cases, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing, or proceeding in this state. The subpoena shall be issued over the signature of the secretary of the board and the seal, and in the name of this state.

(6) On revocation or suspension of a license the fact shall be noted on the records of the department and the license shall be marked canceled on the date of its revocation, or suspended, as the case may be. The department shall, on order of suspension or revocation being entered, transmit to the county recorder in which the license of the licensee affected by the judgment is registered and recorded, a copy of the order, certified by the secretary of the board, for record, and it shall be registered in the same manner and in the same book in which the registration of the certificate to practice dentistry is kept.

**History:** En. Sec. 13, Ch. 48, L. 1935; amd. Sec. 6, Ch. 352, L. 1969; amd. Sec. 85, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "board" for "state board of dental examiners" in subsection (1) and subdivision (1)(d); substituted references to the "department"

for references to the "secretary of the board" and "board" in subsections (3) and (6); deleted a clause from the end of subsection (3) and three sentences from subsection (4) relating to service of process on the accused; and made minor changes in phraseology, punctuation and style. For prior version, see parent volume.

### 66-914. (3115.14) Repealed.

#### Repeal

Section 66-914 (Sec. 14, Ch. 48, L. 1935), relating to judicial review on revocation

or suspension of a license, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-919. (3115.19) Practicing dentistry without certificate, penalty for—disposition of fines.** A person who, as principal, agent, employer, employee, or assistant, practices dentistry, or who does an act of dentistry, without having first secured a certificate to practice dentistry from the department entitling him to practice in this state, is guilty of a misdemeanor, and on conviction in a district court may be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) or be confined for a period not exceeding six (6) months in the county jail. Fines imposed and collected under this act shall be paid into the treasury of the county in which the suits, actions, or proceedings are commenced. Money paid into the treasury over and above the amount necessary to reimburse the county for expense incurred by the county in a suit, action, or proceeding brought under this chapter, shall be deposited, before January 1 of each year, in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

**History:** En. Sec. 19, Ch. 48, L. 1935; amd. Sec. 3, Ch. 38, L. 1941; amd. Sec. 150, Ch. 147, L. 1963; amd. Sec. 86, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "state board of dental examiners" in the first sentence; substituted "this chapter" for "this act" in the last sentence; added "subject to section 82A-1603(6)" to the last sentence; and made minor changes in phraseology, punctuation and style.

**66-920. (3115.20) Affiliation with national association authorized—delegate—expenses allowed.** The board may affiliate with the national association as an active member, pay regular annual dues to the association, and send a delegate to the meetings of the association. The delegate shall be reimbursed as follows:

(1) Fifteen dollars (\$15) per day for each day traveling to and from a meeting and while in actual attendance at a meeting;

(2) Expenses and travel authorized under sections 59-538 and 59-801; and

(3) First-class railroad and Pullman fares actually incurred to and from his place of residence to the place of a meeting.

**History:** En. Sec. 20, Ch. 48, L. 1935; amd. Sec. 8, Ch. 352, L. 1969; amd. Sec. 87, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "board" for "board of dental examiners" in the first sentence; and made minor changes in phraseology, punctuation and style.

**66-921. Dental hygiene defined—dental hygienists—qualifications—examination — fee — registration — certificate form — re-examination — powers and limitations—revocation of license.** (1) The department may issue to qualified applicants licenses for the practice of dental hygiene to be known as dental hygienists. The practice of dental hygiene is the doing by one person, for a direct or indirect consideration, with respect to the teeth of another person, or an act or service, educational, therapeutic, prophylactic, or preventive in nature, as the board, in writing, defines and authorizes. However, this section does not allow the board or a licensed dentist to delegate any of the following duties: (a) diagnosis, treatment planning and prescription; (b) surgical procedures on hard and soft tissues; (c) restorative, prosthetic, orthodontic, and other procedures which require the knowledge and skill of a dentist; (d) prescription for drugs, medications, or work authorizations.

(2) A candidate for examination as a dental hygienist shall file in his full name an application for examination with the department at least twenty (20) days before the date set by the board for the commencement of the examination and at the time of making the application shall pay the department a fee of twenty dollars (\$20). The applicant shall also furnish satisfactory proof that he is of good moral character and has earned a diploma or certificate from a school of dental hygiene offering a course of study recognized and approved by the board.

(3) The board shall make uniform rules governing the matter of examinations for a license to practice dental hygiene in this state, which examinations are open to an applicant meeting the requirements of this act, and shall also provide in its rules for giving reasonable notice of the time and place where examinations are held.

(4) The board may recognize a certificate granted by the national board of dental hygiene examiners instead of an examination the board requires.

(5) An applicant who successfully passes the examination prescribed by the board shall, on the payment of a fee of fifteen dollars (\$15), be granted a license as a dental hygienist, and shall be registered in a record kept by the department, and shall receive a certificate, signed by the members of the board, in a form prescribed by the board.

(6) A licensed dental hygienist may practice in the office of a licensed and actively practicing dentist or in a public or private institution or under a board of health or in a public clinic authorized by the board, but may not practice except under the direct personal supervision of a licensed dentist; however, the dental hygienist may give instruction in dental hygiene without the supervision of a licensed dentist in a public or private institution or under a board of health or in a public clinic authorized by the board.

(7) An applicant failing to pass his first examination may, if otherwise qualified, take subsequent examinations on payment of the fee of twenty dollars (\$20) for each examination.

**History:** En. Sec. 21, Ch. 48, L. 1935;  
amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88,  
Ch. 350, L. 1974.

#### **Amendments**

The 1974 amendment substituted references to the "department" for references



to the "state board of dental examiners" and the "secretary-treasurer of the board"; substituted "board" for "state board of dental examiners" in subsections (1) and (4); deleted a paragraph relating to dental hygienists in practice prior to passage of the original act; substituted "in a form

prescribed by the board" at the end of subsection (5) for a paragraph containing the wording to be used in the licensee's certificate; and made minor changes in phraseology, punctuation and style. For prior version, see parent volume.

**66-922. (3115.22) Annual license fee for dental hygienists—revocation of license.** Before March 1 of each year a licensed dental hygienist shall pay to the department a license fee of three dollars (\$3), and in default of payment, the board may after hearing and on thirty (30) days' notice revoke the license of the hygienist in default; but the payment of the fee on or before the time of hearing, with an additional sum fixed by the board, not exceeding three dollars (\$3), excuses the default. The department may collect the fee by suit. The board may likewise revoke or suspend the license of a dental hygienist for violating this act.

History: En. Sec. 22, Ch. 48, L. 1935; amd. Sec. 10, Ch. 352, L. 1969; amd. Sec. 89, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "board of dental examiners" and "board"; and made minor changes in phraseology, punctuation and style.

**66-923. (3115.23) Admission of dental hygienists from other states—unlawful to practice without license—licenses for practicing hygienists—reciprocity.** (1) A dental hygienist:

(a) Who has been lawfully licensed to practice in another state or territory which has and maintains a standard for the practice of dental hygiene which, in the opinion of the board, is equal to that at the time maintained in this state,

(b) Who has been lawfully and continuously engaged in the practice of dental hygiene for a period of one (1) year or more immediately before filing his application to practice in this state, and

(c) Who deposits in person with the department an attested certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and of his being a person of good moral character and of professional attainments; may on the payment of a fee of twenty dollars (\$20) and after satisfactory practical examination demonstrating his proficiency, be granted a license to practice dental hygiene in this state without being required to take an examination in theory. Except as provided in subsection (2) of this section, no license may be issued without an examination in theory to the applicant, unless the state or territory from which the certificate has been granted extends a like privilege to engage in the practice of dental hygiene to dental hygienists licensed by this state, and who have moved to the other state.

(2) A dental hygienist who has been lawfully licensed to practice in another state or territory not having reciprocity with this state but which has and maintains a standard for the practice of dental hygiene which, in the opinion of the board, is equal to that at the time maintained in this state, and who deposits in person with the department, an attested

certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and his being a person of good moral character and of professional attainment may, on the payment of a fee of twenty dollars (\$20), be granted a temporary license authorizing the person to practice dental hygiene from the time of the granting of the license until the time of the next regular examination for dental hygiene set by the board. No additional fee for the examination may be charged.

(3) Except as provided in subsections (1) and (2) of this section no person may engage in the practice of dental hygiene or practice as a dental hygienist in this state until he has passed an examination approved by the board under rules it considers proper and has been issued a license by the department.

(4) The board may enter into reciprocity agreements with other states or territories, the standards of which as to the practice of dental hygiene, are, in the opinion of the board, equal to those of this state.

(5) Nothing in this act relating to the practice of dental hygiene applies to its practice by a licensed dentist or a licensed physician and surgeon in this state.

**History:** En. Sec. 23, Ch. 48, L. 1935; amd. Sec. 11, Ch. 352, L. 1969; amd. Sec. 90, Ch. 350, L. 1974.

partment" for "secretary-treasurer of the board" and "board" throughout the section; and made minor changes in phraseology, punctuation and style.

#### **Amendments**

The 1974 amendment substituted "de-

### **66-925. (3115.25) Repealed.**

#### **Repeal**

Section 66-925 (Sec. 27, Ch. 48, L. 1935; Sec. 151, Ch. 147, L. 1963), relating to the

short title of the act, was repealed by Sec. 363, Ch. 350, Laws of 1974.

## **CHAPTER 10—MEDICINE—REGULATION OF PRACTICE**

### **Section**

- 66-1012. Practice of medicine defined—exemptions from licensing requirements.
- 66-1013. [Transferred.]
- 66-1015. Organization.
- 66-1017. Powers and duties of board.
- 66-1018. Meetings.
- 66-1019. Records.
- 66-1020. Compensation of members.
- 66-1021. Kinds of certificates—issuance—reciprocity certificates and certificates by endorsement—renewal.
- 66-1023. Practice authorized by certificate—physician's certificate.
- 66-1025. Qualifications for licensure—physician's certificates, reciprocity and endorsement.
- 66-1026. Qualifications for licensure—temporary certificate.
- 66-1027. Qualifications for licensure—limitations.
- 66-1028. Approved medical school.
- 66-1029. Approved internship.
- 66-1030. Approved residency.
- 66-1031. License fees.
- 66-1032. Application for license.
- 66-1033. Examination.
- 66-1034. Issuance of license—prior practice prohibited.
- 66-1036. Refusal of license.
- 66-1037. Unprofessional conduct.

- 66-1038. Revocation or suspension of license—probation.
- 66-1041. Violations—penalties.
- 66-1042. Annual registration fees—limiting authority to impose registration fees.
- 66-1043. Disposition of money received.
- 66-1045. Injunctive relief—manner of charging violation of act.
- 66-1048. Notice of change of address or name.
- 66-1050. Gunshot or stab wounds to be reported.
- 66-1051. Immunity from liability.

### 66-1010. Repealed.

#### Repeal

Section 66-1010 (Sec. 1, Ch. 338, L. 1969), relating to the short title of the act, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-1012. Practice of medicine defined—exemptions from licensing requirements.** (1) Unless the context requires otherwise in this act:

(a) "Practice of medicine" means the diagnosis, treatment, or correction of, or the attempt to, or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, method, devices, or instrumentalities. If a person who does not possess a license to practice medicine in this state, under this act, and who is not exempt from the licensing requirements of this act, performs acts constituting the practice of medicine, he is practicing medicine in violation of this act.

(b) "Board" means the Montana state board of medical examiners, provided for in section 82A-1602.15.

(c) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

(2) This act does not prohibit or require a license with respect to any of the following acts:

(a) The gratuitous rendering of services in cases of emergency or catastrophe;

(b) The rendering of services in this state by a physician lawfully practicing medicine in another state or territory; however, if the physician does not limit the services to an occasional case, or if he has any established or regularly used hospital connections in this state, or maintains or is provided with, for his regular use, an office or other place for rendering the services, he must possess a license to practice medicine in this state;

(c) The practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) The practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) The practice of optometry under the conditions and limitations defined by the laws of this state;

(f) The practice of osteopathy under the conditions and limitations defined in sections 66-1401.1 to 66-1413, as amended, for those doctors of osteopathy who do not receive a physician's certificate under this act;

(g) The practice of chiropractic under the conditions and limitations defined by the laws of this state;



(h) The practice of Christian Science, with or without compensation; and ritual circumcisions by rabbis;

(i) The performance by commissioned medical officers of the armed forces of the United States or of the United States public health service or of the United States veterans administration of their lawful duties in this state as officers;

(j) The rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses, or of midwife services by registered nurse-midwives under the supervision of a licensed physician;

(k) The rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this act;

(l) The rendering of services by a physical therapist, technician, or other paramedical specialist, under the personal and responsible direction and supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist; and

(m) The practice by persons licensed under the laws of this state to practice a limited field of the healing arts and not specifically designated, under the conditions and limitations defined by law.

(3) Licensees referred to in subsection (2) of this section, who are licensed to practice a limited field of healing arts, shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses, and may not use the title M.D., or any word or abbreviation to indicate, or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed.

**History:** En. Sec. 3, Ch. 338, L. 1969; amd. Sec. 1, Ch. 203, L. 1971; amd. Sec. 1, Ch. 97, L. 1974; amd. Sec. 91, Ch. 350, L. 1974.

amended or as hereafter amended, for those doctors of osteopathy who do not receive a physician's certificate under this act" at the end of subdivision (2) (f) for "by the laws of this state as now or hereafter enacted."

Chapter 97, Laws of 1974, added "or of midwife services by registered nurse-midwives under the supervision of a licensed physician" to the end of subdivision (2) (j).

Chapter 350, Laws of 1974, added definitions of "Board" and "Department" to subsection (1); substituted "sections 66-1401.1 to 66-1413" in subdivision (2) (f) for "sections 66-1401 to 66-1413"; designated the final paragraph as subsection (3); and made minor changes in phraseology, punctuation and style.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 97 and once by Ch. 350. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

The 1971 amendment substituted "in sections 66-1401 to 66-1413, inclusive, of the Revised Code of Montana, 1947, as

### 66-1013. [Transferred.]

#### Compiler's Notes

Section 92, Ch. 350, Laws of 1974 renumbered this section as sec. 82A-1602.15.

**66-1014. Repealed.****Repeal**

Section 66-1014 (Sec. 5, Ch. 338, L. 1969), relating to the term of office for members

of the state board of medical examiners, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-1015. Organization.** The board shall, at the first meeting each year, elect from among its members a president, vice-president, and secretary. The board shall adopt a seal, in which appears the words "The Board of Medical Examiners of Montana" and the further words "Official Seal" and acts, rules, orders, certificates, and licenses shall be authenticated by the seal.

**History:** En. Sec. 6, Ch. 338, L. 1969; amd. Sec. 93, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "board" for "board of medical examiners"; substituted "elect from its members a president,

vice-president, and secretary" for "elect from among their members a president and vice-president; and appoint an executive secretary, who may be a board member or another person"; and made minor changes in phraseology and punctuation.

**66-1017. Powers and duties of board.** (1) The board may:

(a) Adopt rules necessary or proper to carry out this act. The rules shall be fair, impartial, and nondiscriminatory.

(b) Hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board.

(c) Aid the county attorneys of this state in the enforcement of this act and the prosecution of persons, firms, associations, or corporations charged with violations of this act.

(2) A person hired by the department to assist it and the board in investigations, the authorization of temporary certificates, professional correspondence, and related matters shall be approved by the board.

**History:** En. Sec. 8, Ch. 338, L. 1969; amd. Sec. 94, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment deleted from subdivision (1)(a) a reference to the continuing effect of rules of the board existing at time of passage of the original act; deleted from subdivision (1)(b) a clause re-

lating to the board's power to subpoena and take evidence; deleted a paragraph relating to employment of an executive secretary, legal counsel and other personnel; added subsection (2); and made minor changes in phraseology, punctuation and style. For prior version, see parent volume.

**66-1018. Meetings.** The board shall hold meetings for examinations, and for other business properly before the board at least twice annually at times and places set by the board. The president of the board may call special meetings he considers advisable or necessary. Four (4) members of the board constitute a quorum.

**History:** En. Sec. 9, Ch. 338, L. 1969; amd. Sec. 95, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "board"

for "board of medical examiners"; and made minor changes in phraseology, punctuation and style.

**66-1019. Records.** The department shall keep a record of the board's proceedings, and also records of applicants for a certificate and a register

of licenses. The register is prima facie evidence of the matters contained in it.

**History:** En. Sec. 10, Ch. 338, L. 1969; amd. Sec. 96, Ch. 350, L. 1974.

partment shall keep a record" for "board shall keep a record"; and made minor changes in phraseology.

**Amendments**

The 1974 amendment substituted "de-

**66-1020. Compensation of members.** Each member of the board shall receive twenty-five dollars (\$25) per day compensation while traveling to and from board meetings, and while attending board meetings, and for each full day away from home while conducting board business plus actual and necessary expenses and mileage as provided in section 59-801 while in the active and necessary discharge of his duties.

**History:** En. Sec. 11, Ch. 338, L. 1969; amd. Sec. 1, Ch. 165, L. 1974; amd. Sec. 97, Ch. 350, L. 1974.

posite section embodying the changes made by both amendments.

**Amendments**

**Compiler's Notes**

This section was amended twice in 1974, once by Ch. 165 and once by Ch. 350. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a com-

Chapter 165, Laws of 1974, substituted "compensation while traveling to and from board meetings \* \* \* plus actual and necessary expenses" for "per diem."

Chapter 350, Laws of 1974, substituted "board" for "state board of medical examiners"; and inserted "as provided in section 59-801."

**66-1021. Kinds of certificates—issuance—reciprocity certificates and certificates by endorsement—renewal.** The department may issue two (2) forms of certificates under the board's seal: the physician's certificate and the temporary certificate. The physician's certificate shall be signed by the president, but the temporary certificate may be signed by any board member. The board shall decide which certificate to issue. These certificates shall be designated as:

- (1) Physician's certificate, which is subject to annual registration;
- (2) Temporary certificate, which is subject to specifications and limitations imposed by the board.

**History:** En. Sec. 12, Ch. 338, L. 1969; amd. Sec. 98, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "department" for "board" at the beginning of

the section; deleted "the executive secretary" in the second sentence after "certificate shall be signed by"; and made minor changes in phraseology, punctuation and style.

**66-1023. Practice authorized by certificate—physician's certificate.** The physician's certificate, which may be issued only to citizens of the United States, authorizes the holder to perform one or more of the acts embraced in section 66-1012, R. C. M. 1947, in a manner reasonably consistent with his training, skill and experience.

**History:** En. Sec. 14, Ch. 338, L. 1969; amd. Sec. 3, Ch. 203, L. 1971.

**Amendments**

The 1971 amendment added "R. C. M. 1947" to the reference to section 66-1012.

**66-1025. Qualifications for licensure—physician's certificates, reciprocity and endorsement.** (1) The board may authorize the department to



issue to an applicant a physician's certificate, certificate by reciprocity, or certificate by endorsement only on the basis of:

(a) Passing an examination given and graded by the department, subject to section 82A-1603;

(b) Certification of record or other certificate of examination issued to or for the applicant by the National Board of Medical Examiners, or successors, by the Federation Licensing Examination Committee, or successors, or by the Medical Council of Canada or successors, if the applicant is a graduate of a Canadian medical school which has been approved by the Medical Council of Canada, or successors, certifying that the applicant has passed an examination given by this board; or

(c) A valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were, in the judgment of the board, essentially equivalent to those of this state for granting a license to practice medicine, if under the scope of the license or certificate the applicant was authorized to practice medicine in the other state, territory, or country.

(2) No applicant who applies for a license on the basis of an examination and fails the examination may be granted a license based on credentials from another state, territory, or foreign country, or on a certificate issued by the National Board of Medical Examiners, or successors, by the Federation Licensing Examination Committee, or successors, or by the Medical Council of Canada, or successors.

(3) The board may adopt reciprocity or endorsement requirements current with changes in standards in the practice of medicine.

(4) The board may, in the case of an applicant for admission by reciprocity or endorsement, require a written or oral examination of the applicant.

(5) The board may require that graduates of foreign medical schools pass an examination given by the Education Council for Foreign Medical Graduates, or successors.

(6) Holders of the degree of doctor of osteopathy granted in 1955 or before will be certified only on the basis of taking and passing the examination given by the department, subject to section 82A-1603. Holders of the degree of doctor of osteopathy granted after 1955 will be certified in the same manner as provided above for physicians.

History: En. Sec. 16, Ch. 338, L. 1969; amd. Sec. 4, Ch. 203, L. 1971; amd. Sec. 1, Ch. 403, L. 1973; amd. Sec. 2, Ch. 166, L. 1974; amd. Sec. 99, Ch. 350, L. 1974.

section embodying the changes made by both amendments.

#### Amendments

The 1971 amendment added subsection (6) [designated subdivision (c)(vi) before the 1974 amendment]; and made a minor change in phraseology.

The 1973 amendment inserted "granted in 1955 or before" following "degree doctor of osteopathy" in subsection (6); and added the second sentence to subsection

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 166 and once by Ch. 350. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite

(6). [Subsection (6) was subdivision (c) (vi) prior to the 1974 amendment.]

Chapter 166, Laws of 1974, inserted in subdivision (1)(b) "or by the Medical Council of Canada, or successors, if the applicant is a graduate of a Canadian medical school which has been approved by the Medical Council of Canada, or successors"; inserted in subsection (2) "or by the Medical Council of Canada, or successors"; and made minor changes in punctuation.

Chapter 350, Laws of 1974, rewrote the introductory clause in subsection (1) which

read: "Subject to the other provisions and conditions of this act, a physician's certificate, or a certificate by reciprocity or a certificate by endorsement shall be granted by the board to an applicant therefor only upon the basis of"; substituted "department" for "board" in subdivision (1)(a) and subsection (6); added "subject to section 82A-1603" at the end of subdivision (1)(a) and at the end of the first sentence in subsection (6); and made numerous minor changes in phraseology, punctuation and style.

**66-1026. Qualifications for licensure—temporary certificate.** The board may authorize the department to issue to an applicant a temporary certificate to practice medicine on the basis of:

(1) Passing an examination given and graded by the department, subject to section 82A-1603; or

(2) Certification of record or other certificate of examination issued to or for the applicant by the National Board of Medical Examiners, or successors, by the Federation Licensing Examination Committee, or successors, or by the Medical Council of Canada, or successors, if the applicant is a graduate of a Canadian medical school which has been approved by the Medical Council of Canada, or successors, certifying that the applicant has passed an examination given by the board; or

(3) A valid, unsuspended, and unrevoked license or certificate issued to the applicant, on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were essentially equivalent, in the judgment of the board, to those of this state at the time for granting a license to practice medicine; and

(4) Being a graduate of an approved medical school who has completed one (1) year of internship, or its equivalent, and being of good moral character and good conduct; and

(5) The board may require that graduates of foreign medical schools pass the examination given by the Education Council for Foreign Medical Graduates, or successors.

**History:** En. Sec. 17, Ch. 338, L. 1969; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 100, Ch. 350, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 366 and once by Ch. 350. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 366, Laws of 1974, inserted in

subdivision (2) "or by the Medical Council of Canada, or successors, if the applicant is a graduate of a Canadian medical school which has been approved by the Medical Council of Canada, or successors."

Chapter 350, Laws of 1974, rewrote the first clause of the first sentence which called for the board to grant temporary certificates; deleted "who may be either a citizen of the United States or an alien" after "applicant" in the first sentence; substituted "department" for "board" and inserted "subject to section 82A-1603" in subdivision (1); and made minor changes in phraseology, punctuation and style.

**Effective Date**

Section 2 of Ch. 403, Laws 1973 provided the act should be in effect from

and after its passage and approval. Approved March 21, 1973.

**66-1027. Qualifications for licensure — limitations.** (1) No person may be granted a physician's certificate to practice medicine in this state unless he:

- (a) Is a citizen of the United States;
- (b) Is of good moral character, as determined by the board;
- (c) Is a graduate of an approved medical school as defined in section 66-1028;

(d) Has completed an approved internship of at least one (1) year or, in the opinion of the board, has had experience or training which is at least the equivalent of one (1) year internship; and

(e) Has made a personal appearance before the board. The board may authorize the department to issue the license subject to terms of probation or other conditions or limitations set by the board, or may refuse a license if the applicant has committed unprofessional conduct or is otherwise unqualified.

(2) No person may be granted a temporary license to practice medicine in this state unless he:

(a) Is a citizen of the United States, or has filed a properly executed declaration of intention to become a citizen of the United States;

(b) Is of good moral character, as determined by the board;

(c) Is a graduate of an approved medical school as defined in section 66-1028;

(d) Has completed an approved internship of at least one (1) year or, in the opinion of the board, has had experience or training which is at least the equivalent of one (1) year internship; and

(e) Has made a personal appearance before at least one (1) member of the board.

(3) A temporary license may be issued to a physician employed by a public institution who is practicing under the direction of a licensed physician. The board may authorize the department to issue a temporary license subject to terms of probation or other conditions or limitations set by the board, or may refuse a temporary license to a person if he has committed unprofessional conduct. The issuance of a temporary certificate imposes no future obligation or duty on the part of the board to grant full licensure or to renew or extend the temporary license. The board may, in the case of an applicant for a temporary certificate, require a written, oral, or practical examination of the applicant.

**History:** En. Sec. 18, Ch. 338, L. 1969; amd. Sec. 3, Ch. 168, L. 1971; amd. Sec. 101, Ch. 350, L. 1974.

**Amendments**

The 1971 amendment deleted former subdivisions (1)(a) and (2)(a), each of which read "is at least twenty-one (21) years of age"; redesignated former subdivisions (b) through (f), inclusive, of subsection (1) as subdivisions (a) through

(e), inclusive; redesignated former subdivisions (b) through (h), inclusive, of subsection (2) as subdivisions (a) through (g), inclusive; and made minor changes in phraseology and style.

The 1974 amendment substituted "board may authorize the department to issue" for "board may grant" in the second sentence of subdivision (1)(e) and in the second sentence of subsection (3); deleted former subdivision (2)(f) [(2)(g) in the parent



volume] relating to approval for temporary licensure by the executive secretary of the board; redesignated former sub-

division (2)(g) as subsection (3); and made minor changes in phraseology, punctuation and style.

**66-1028. Approved medical school.** An approved medical school is a school which either is accredited by the American Osteopathic Association or conforms to the minimum education standards established by the Council on Medical Education of the American Medical Association, or successors, for medical schools, or is equivalent in the sound discretion of the board. The board may, on investigation of the educational standards and facilities, approve any medical school, including foreign medical schools.

**History:** En. Sec. 19, Ch. 338, L. 1969; amd. Sec. 5, Ch. 203, L. 1971; amd. Sec. 102, Ch. 350, L. 1974.

**Amendments**

The 1971 amendment inserted "either

(a) is accredited by the American Osteopathic Association, or (b)."

The 1974 amendment substituted "board" for "board of medical examiners of the state of Montana" in the first sentence; and made minor changes in phraseology, punctuation and style.

**66-1029. Approved internship.** An approved internship is an internship training program of at least one (1) year in a hospital which is either (a) approved for intern training by the American Osteopathic Association, or (b) conforms to the minimum standards for intern training established by the Council on Medical Education of the American Medical Association or successors; provided, however, that the board shall have the authority, upon investigation, to approve any other internship.

**History:** En. Sec. 20, Ch. 338, L. 1969; amd. Sec. 6, Ch. 203, L. 1971.

**Amendments**

The 1971 amendment inserted "which is

either" and clause (a); inserted the designation for clause (b); and made minor changes in phraseology.

**66-1030. Approved residency.** An approved residency is a residency training program in a hospital conforming to (a) the minimum standards for residency training established by the Council on Medical Education of the American Medical Association or successors or (b) approved for residency training by the American Osteopathic Association; provided, however, that the board shall have the authority upon investigation to approve any other residency. The board may require a resident physician to be licensed if he otherwise engages in the practice of medicine in the state of Montana.

**History.** En. Sec. 21, Ch. 338, L. 1969; amd. Sec. 7, Ch. 203, L. 1971.

**Amendments**

The 1971 amendment inserted the designation for clause (a); and inserted "or" and clause (b).

**66-1031. License fees.** (1) An applicant for a license to practice medicine to be issued on the basis of an examination by the board shall pay an examination fee as set by the board. The board shall set the fee and it shall be reasonable and commensurate with the costs of the examination and related costs. Such examination fee shall be in addition to the application fee;

(2) All applicants, except applicants for temporary licenses, shall pay an initial application fee of one hundred dollars (\$100);

(3) An applicant for a temporary license shall pay an initial fee of twenty-five dollars (\$25) and twenty-five dollars (\$25) for each renewal thereof.

(4) No license tax shall be imposed upon physicians by a municipality or any other subdivision of the state.

History: En. Sec. 22, Ch. 338, L. 1969; amd. Sec. 1, Ch. 167, L. 1974.

#### Amendments

The 1974 amendment substituted "an examination fee as set by the board" in the first sentence of subsection (1) for a clause setting a fee of \$100; deleted a

second clause and a second sentence requiring a fee of \$100 for licenses issued on the basis of certificates from other boards; added the second sentence of subsection (1); inserted subsection (2); and made minor changes in punctuation and style.

**66-1032. Application for license.** (1) A person desiring a license to practice medicine shall make application to the department, verified by oath and in a form prescribed by the board. The application shall be accompanied by the license fee and documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by this act, apart from an examination required by the board. The burden of proof is on the applicant, but the board may make an independent investigation to determine whether the applicant possesses the qualifications and whether the applicant has committed unprofessional conduct. At the board's request, the applicant shall provide necessary authorizations for the release of records and information pertinent to the board's information.

(2) An applicant for a license on the basis of an examination shall file his application at least thirty (30) days prior to the announced date of the examination. If the applicant is not at the time of filing his application a graduate of, but is then in attendance at, an approved medical school, he shall submit to the department, instead of a diploma or other required evidence of graduation, a written statement from the dean or other authorized representative of the approved medical school that the applicant will receive his diploma at the end of the then current school term. The applicant may not be granted a certificate until he has filed with the department his diploma or other acceptable evidence of graduation from the approved medical school, and has complied with the requirements of subsection (1) of this section, and no license may be issued to him until he has satisfied the board that he has completed at least one (1) year of an approved internship, or its equivalent, and has otherwise met the requirements for the issuance of a license under this act.

History: En. Sec. 23, Ch. 338, L. 1969; amd. Sec. 103, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "board" throughout the section; and made minor changes in phraseology, punctuation and style.

**66-1033. Examination.** (1) Examinations for a license to practice medicine shall be held not less than twice each year, at a time and place specified by the board. The examination shall be conducted in the English language, and shall be sufficiently comprehensive in medicine to adequately

test the applicant's professional competence and ability. The examination shall be fair and impartial. Examination papers may not disclose the name of an applicant but shall be identified by a number assigned by the department. The board may require the department to use the examination prepared by the National Board of Medical Examiners, or the examination prepared by the Federation Licensing Examination Committee, or successors.

(2) The board may, in its discretion, require the department to give, subject to section 82A-1603, an oral or practical examination to test the applicant's qualifications for licensure, and grant appropriate credit for this.

(3) The board may use other Montana physicians to assist in preparing the examination.

(4) A person may not be granted a license to practice medicine if he fails to attain an average grade of at least seventy-five per cent (75%). If an applicant fails to meet the minimum grade requirements in his first examination he may, after not less than six (6) months nor more than twelve (12) months, be re-examined. He may take one (1) additional examination but not less than one (1) year after the date of the last preceding examination. An examination fee shall be charged for each additional examination. If an applicant is prevented through no fault of his own from taking a scheduled examination he may, within two (2) years, be examined without submitting a new application.

History: En. Sec. 24, Ch. 338, L. 1969; amd. Sec. 2, Ch. 167, L. 1974; amd. Sec. 104, Ch. 350, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 167 and once by Ch. 350. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 167, Laws of 1974, substituted "An examination fee shall be charged for each additional examination" in subsection (4) for a clause requiring a \$50 fee for additional examinations.

Chapter 350, Laws of 1974, substituted "department" for "executive secretary of the board" in the fourth sentence of subsection (1); substituted "board may require the department to use" for "board may use" in the fifth sentence of subsection (1); substituted "board may, in its discretion, require the department to give, subject to section 82A-1603" in subsection (2) for "board may, in its discretion, give"; substituted "to assist in preparing" for "to assist in preparing and conducting" in subsection (3); deleted "without an additional fee" after "be re-examined" in the second sentence of subsection (4); deleted "without payment of another fee" before "submitting a new application" in the last sentence of subsection (4); and made minor changes in phraseology, punctuation and style.

**66-1034. Issuance of license—prior practice prohibited.** If the board determines that an applicant possesses the qualifications required by this act, the department shall issue a license to practice medicine which shall be signed by the president or vice-president, attested by the secretary, and sealed with the seal of the board. Prior to the issuance of a license, the applicant may not engage in the practice of medicine in this state.

History: En. Sec. 25, Ch. 338, L. 1969; amd. Sec. 105, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "board" in the first sentence; and made minor changes in phraseology, punctuation and style.



**66-1035. Repealed.****Repeal**

Section 66-1035 (Sec. 26, Ch. 338, L. 1969), relating to validation of licenses

previously issued, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-1036. Refusal of license.** If the board determines that an applicant for a license to practice medicine does not possess the qualifications or character required by this act or that he has committed unprofessional conduct, it shall refrain from authorizing the department to issue a license. The department shall mail to the applicant, at his last address of record with the department, written notification of the board's decision together with notice of a time and place of a hearing before the board. If the applicant without cause fails to appear at the hearing, or if after hearing, the board determines he is not entitled to a license, the board shall refuse to grant the license.

**History:** En. Sec. 27, Ch. 338, L. 1969; amd. Sec. 106, Ch. 350, L. 1974.

the first sentence for "from issuing"; substituted "department" for "board" twice in the second sentence; and made minor changes in phraseology, punctuation and style.

**Amendments**

The 1974 amendment substituted "from authorizing the department to issue" in

**66-1037. Unprofessional conduct.** As used in this act "unprofessional conduct" means:

(1) Resorting to fraud, misrepresentation, or deception in applying for or in securing a license or in taking the examination provided for in this act;

(2) Performing abortion contrary to law;

(3) Obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

(4) Willful disobedience of the rules of the board;

(5) Conviction of an offense involving moral turpitude, or the conviction of a felony involving moral turpitude, and the judgment of the conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

(6) Administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration, or successors, otherwise than in the course of legitimate or reputable professional practice;

(7) Conviction or violation of a federal or state law regulating the possession, distribution, or use of a narcotic or hallucinatory drug as defined by the federal food and drug administration; and the judgment or conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

(8) Habitual intemperance or excessive use of narcotic drugs, alcohol, or of any other drug or substance to the extent that the use impairs the user physically or mentally;

(9) Conduct unbecoming a person licensed to practice medicine or detrimental to the best interests of the public;

(10) Resorting to fraud, misrepresentation or deception in the examination or treatment of a person, or in billing or reporting to a person, company, institution, or organization;

(11) Testifying in court on a contingency basis;

(12) Conspiring to misrepresent or willfully misrepresenting, medical conditions improperly to increase or decrease a settlement, award, verdict, or judgment;

(13) Aiding or abetting, in the practice of medicine, a person not licensed to practice medicine or a person whose license to practice medicine is suspended;

(14) Gross malpractice, or negligent practice;

(15) Practicing medicine as the partner, agent, or employee of, or in joint venture with, a person who does not hold a license to practice medicine within this state; however, this does not prohibit the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 15, chapter 21, nor does this apply to a single consultation with or a single treatment by a person or persons licensed to practice medicine and surgery in another state or territory of the United States or foreign country;

(16) Violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate this act or the rules authorized by it; or

(17) Any other act, whether specifically enumerated or not, which, in fact, constitutes unprofessional conduct.

**History:** En. Sec. 28, Ch. 338, L. 1969; for "board of medical examiners" in subamd. Sec. 107, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "board"

for "board of medical examiners" in subdivision (4); and made minor changes in phraseology, punctuation and style.

**66-1038. Revocation or suspension of license—probation.** (1) The board may, when it has been brought to its attention that there is reason to suspect that a person having a license or certificate to practice medicine in this state:

(a) Is mentally or physically unable, safely, to engage in the practice of medicine, or has procured his license to practice medicine by fraud or misrepresentation or through mistake, or has been declared incompetent by a court of competent jurisdiction and thereafter has not been lawfully declared competent, or when a condition exists which impairs his intellect or judgment to the extent that it incapacitates him for the safe performance of professional duties;

(b) Has been guilty of unprofessional conduct;

(c) Has practiced medicine while his license was suspended or revoked; or

(d) Has, while under probation, violated its terms; make an investigation, including requiring the person to submit to a physical examination or a mental examination or both by a physician or physicians selected by the board when it appears in the best interests of the public that this

evaluation be secured, to determine the probability of the existence of these conditions or the commission of these offenses. The board may examine and scrutinize the hospital records and reports of a licensee as part of the examination and copies of these shall be released to the board on written request. If the board has reasonable cause to believe that this probability exists, the department shall mail to the person, at his last address of record with the department, a specification of the charges against him, together with a written citation of the time and place of the hearing on it, advising him that he may be present in person, and by counsel if he so desires, to offer evidence and be heard in his defense. The time fixed for the hearing shall not be less than thirty (30) days from the date of mailing the notice.

(2) A person, including a member of the board, may file a sworn complaint with the department against a person having a license to practice medicine in this state, charging him with the commission of any of the offenses set forth in section 66-1037, or subsection one (1) of this section, which complaint shall set forth a specification of the charges. When the complaint is filed, the department shall mail a copy to the person accused, at his last address of record with the department, together with a written citation of the time and place of the hearing on it.

(3) At the hearing the board shall adopt a resolution finding him guilty or not guilty of the matters charged. If the board finds that the conditions referred to in section 66-1037, or subsection (1) of this section do not exist with respect to the person or if he is found not guilty, the board shall dismiss the charges or complaint, but if the board does find that the conditions referred to in section 66-1037 or in subsection (1) of this section do exist and the person is found guilty, the board shall:

- (a) Revoke his license;
- (b) Suspend his right to practice for a period not exceeding one (1) year;
- (c) Suspend its judgment of revocation on the terms and conditions to be determined by the board;
- (d) Place him on probation; or
- (e) Take any other action in relation to disciplining him as the board in its discretion considers proper.

(4) The department in cases of revocation, suspension, or probation shall enter in its records the facts of the action, and of subsequent action of the board with respect to it.

(5) On the expiration of the term of suspension, the licensee shall be reinstated by the board, if he furnishes the board with evidence that he is then of good moral character and conduct and restored to good health and that he has not practiced medicine in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or if not restored to good health or if the evidence shows he has practiced medicine in this state during the term of suspension, the board shall revoke the license at a hearing, with notice and the procedure provided in subsection (1) of this section. The revocation is final and absolute.



(6) If a person holding a license to practice medicine under this act is, by a final order or adjudication of a court of competent jurisdiction, adjudged to be mentally incompetent or insane, or addicted to the use of narcotics, his license may be suspended by the board. The suspension continues until the licensee is found or adjudged by the court to be restored to reason or cured, or until he is discharged as restored to reason or cured and his professional competence has been proven to the satisfaction of the board.

**History:** En. Sec. 29, Ch. 338, L. 1969; amd. Sec. 108, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted references to the department for references to the board of examiners and its executive secretary and president throughout the

section; deleted from the end of subsection (2) a clause relating to the information to be contained in the citation to an accused; deleted a clause at the beginning of subsection (3) relating to the hearing of evidence; and made minor changes in phraseology, punctuation and style.

**66-1040. Repealed.**

**Repeal**

Section 66-1040 (Sec. 31, Ch. 338, L. 1969), relating to appeals from decisions

of the board, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-1041. Violations—penalties.** (1) A person practicing medicine in this state without complying with this act, or an association or corporation (except a professional service corporation under Title 15, chapter 21) practicing medicine in this state, or a person, association, or corporation violating this act or an officer or director of an association or corporation violating this act, is guilty of a misdemeanor, and on conviction, shall be fined not less than two hundred fifty dollars (\$250) or more than one thousand dollars (\$1,000) or imprisoned in the county jail for not less than ninety (90) days or more than one (1) year, or both. Each daily failure to comply with, or each daily violation of this act, constitutes a separate offense.

(2) A person presenting, or attempting to file as his own, the diploma, license, certificate, or credentials of another, or who gives false or forged evidence to the board, a member of the board, or the department, in connection with an application for a license to practice medicine, or who practices medicine under a false or assumed name, or who falsely impersonates another licensee, is guilty of a felony, and on conviction shall be imprisoned in the state penitentiary for a term of not less than one (1) year or more than ten (10) years.

**History:** En. Sec. 32, Ch. 338, L. 1969; amd. Sec. 109, Ch. 350, L. 1974.

partment" after "member of the board" in subsection (2); and made minor changes in phraseology, punctuation and style.

**Amendments**

The 1974 amendment inserted "or the de-

**66-1042. Annual registration fees—limiting authority to impose registration fees.** (1) In addition to the license fees required of applicants, a licensed physician actively practicing medicine in this state shall pay each year to the department, an annual registration fee, not to exceed the sum of twenty-five dollars (\$25), as prescribed by the board and ap-

proved by the department of administration. If a person licensed to practice medicine absents himself from the state for a period of one (1) or more years, or does not engage in active practice in this state, he may continue his license in good standing by the payment of five dollars (\$5) each year, or at the discretion of the board, he may be reinstated on the payment of a fee of five dollars (\$5) for each year of absence or inactive practice.

(2) The annual payments for registration shall be made prior to April 1, and a receipt acknowledging payment of the annual registration fee shall be issued by the department. The department shall mail registration notices, at least sixty (60) days before the registration is due. In case of default in the payment of the annual registration fee by a person licensed to practice medicine who is actively practicing medicine in this state, his underlying certificate to practice medicine may be revoked by the board on thirty (30) days' notice given to the delinquent of the time and place of considering the revocation. A registered or certified letter addressed to the last known address of the person failing to comply with the requirements of annual registration, as the address appears on the records of the department, constitutes sufficient notice of intention to revoke his underlying certificate. No certificate may be revoked for non-payment if the person authorized to practice medicine, and notified, pays the annual registration fee before or at the time fixed for consideration of revocation together with a delinquency penalty of ten dollars (\$10). The department may collect the dues by an action at law.

(3) No registration or license fee may be imposed on a licensee under this act by a municipality or any other subdivision of the state.

**History:** En. Sec. 33, Ch. 338, L. 1969; amd. Sec. 110, Ch. 350, L. 1974.

#### **Amendments**

The 1974 amendment substituted references to the department throughout the

section for references to the board of examiners and its executive secretary; substituted "department of administration" in the first sentence of subsection (1) for "budget director"; and made minor changes in phraseology, punctuation and style.

**66-1043. Disposition of money received.** Money received under this act by the department shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6). In the case of a deficiency the reserves in this account in the earmarked revenue fund may be used on approval by the department of administration and the governor.

**History:** En. Sec. 34, Ch. 338, L. 1969; amd. Sec. 111, Ch. 350, L. 1974.

#### **Amendments**

The 1974 amendment deleted provisions detailing the procedure for making depos-

its in and withdrawals from the earmarked revenue fund; deleted a requirement for biennial reports to the governor; substituted "department of administration" for "budget director"; and made minor changes in phraseology, punctuation and style.

### **66-1044. Repealed.**

#### **Repeal**

Section 66-1044 (Sec. 35, Ch. 338, L. 1969), relating to transfer of records, sup-

plies and money from the earlier state board of medical examiners, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-1045. Injunctive relief—manner of charging violation of act.** The board, notwithstanding any other provision in this act, may maintain an

action to enjoin a person from engaging in the practice of medicine, until a license to practice medicine is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court. The injunction does not relieve the person practicing medicine without a license from a criminal prosecution. The remedy by injunction is in addition to remedies provided for the criminal prosecution of the offender. In charging a person in a complaint for injunction or in an affidavit, information, or indictment with a violation of this law by practicing medicine without a license, it is sufficient to charge that he did, on a certain day and in a certain county, engage in the practice of medicine, not having a license to do so, without averring further or more particular facts concerning the violation.

**History:** En. Sec. 36, Ch. 338, L. 1969; for "state board of medical examiners" in  
amd. Sec. 112, Ch. 350, L. 1974. the first sentence; and made minor changes  
in phraseology, punctuation and style.

**Amendments**

The 1974 amendment substituted "board"

**66-1048. Notice of change of address or name.** When a person applies for a license of any type to practice medicine in this state the person shall designate in his application his correct and official address to which the department shall send communications, notices, orders, citations, or other process, if any, affecting him. If the person changes his address, or when the name of a licensee is changed by marriage or otherwise, the person shall within thirty (30) days notify the department in writing of his old and new address or of the former name and new name. This information shall be entered promptly by the department in the official records of the department. A person licensed to practice medicine in this state shall keep the department advised at all times of his correct mailing address and of his correct name.

**History:** En. Sec. 39, Ch. 338, L. 1969; ences to the department throughout the  
amd. Sec. 113, Ch. 350, L. 1974. section for references to the board and  
its executive secretary; and made minor  
changes in phraseology, punctuation and  
style.

**Amendments**

The 1974 amendment substituted refer-

**66-1049. Repealed.**

**Repeal**

Section 66-1049 (Sec. 40, Ch. 338, L. 1969), relating to service of notice or other

process, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-1050. Gunshot or stab wounds to be reported.** The physician, nurse, or other person licensed to practice a health care profession, treating the victim of a gunshot wound or stabbing, shall make a report to a law enforcement officer by the fastest possible means. Within twenty-four (24) hours after initial treatment or first observation of the wound, a written report shall be submitted including the name and address of the victim, if known, and shall be sent by regular mail.

**History:** En. 66-1050 by Sec. 1, Ch. 303, L. 1974.

**66-1051. Immunity from liability.** A physician or other person reporting pursuant to section 1 [66-1050] shall be presumed to be acting in good



faith and in so doing, shall be immune from any liability, civil or criminal, unless he acted in bad faith or with malicious purpose.

History: En. 66-1051 by Sec. 2, Ch. 303,  
L. 1974.

## CHAPTER 12—NURSING—REGULATION OF PRACTICE

### Section

- 66-1222. Definitions—identification of board when administering act for professional nursing and for practical nursing.
- 66-1223. Seal—board records public—legal counsel.
- 66-1225. Organization—duties and powers—separation of records responsive to functions of board—dual administrations to be exclusive of each other.
- 66-1226. Reimbursement for expenses—compensation.
- 66-1227. Qualifications of applicants for license to practice professional nursing.
- 66-1228. License—by examination—by endorsement without examination—license fees.
- 66-1231. Qualifications of applicants for licensed practical nurse.
- 66-1232. License of practical nurse by examination—by endorsement without examination.
- 66-1234. Fee.
- 66-1236. Renewal of license.
- 66-1237. Disposition of fees.
- 66-1238. Schools of nursing—application for approval.
- 66-1239. Survey and approval—secretary.
- 66-1240. Grounds for discipline.
- 66-1241. Disciplinary proceedings.
- 66-1246. Licensing of midwives.

**66-1222. Definitions—identification of board when administering act for professional nursing and for practical nursing.** Unless the context requires otherwise, in this act:

(1) "Board" means the board of nursing, provided for in section 82A-1602.18 with dual functions in the field of professional nursing and practical nursing. In matters relating to professional nursing the board consists of five (5) members. In matters relating to practical nursing the board consists of eight (8) members. The board of five (5) members may for convenience be referred to as the board followed by the words "professional nursing administration," and the board of eight (8) members may, for convenience, be referred to as the board followed by the words "practical nursing administration."

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

(3) "Practice of nursing" embraces two (2) classes of nursing service and activity, as follows:

(a) "Practice of professional nursing" means the performance for compensation of an act in the observation, care, and counsel of the ill, injured, or infirm, or in the maintenance of health, or prevention of illness of others, or in the supervision and teaching of other personnel, or the administration of medications and treatments prescribed by a person licensed in this state to prescribe medications and treatments; requiring substantial specialized judgment and skill and based on knowledge and application of the principles of biological, physical, and social science. The term does not include acts of diagnosis or prescription of therapeutic or corrective measures.

(b) "Practice of practical nursing" means the performance for compensation in the care of the ill, injured, or infirm, of acts selected by and performed under the direction of a registered professional nurse, or a person licensed in this state to prescribe medications and treatments; and not requiring the substantial specialized skill, judgment, and knowledge required in professional nursing.

History: En. Sec. 2, Ch. 243, L. 1953; amd. Sec. 2, Ch. 291, L. 1967; amd. Sec. 114, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "provided for in section 82A-1602.18" in sub-

division (1) for "created by this act"; substituted "board" for "Montana state board of nursing" in subdivision (1); inserted the definition of "Department"; and made minor changes in phraseology, punctuation and style.

**66-1223. Seal—board records public—legal counsel.** (1) The board shall have a seal which shall be used to authenticate its acts under each administration. The seal shall have inscribed the words "Board of Nursing"—"Official Seal" and a device or legend designated by the board.

(2) The records and files of the board kept by the department are at all times open to public inspection.

(3) The attorney general is the attorney and legal counsel for the board; but the department may, with the approval of the attorney general, appoint additional legal counsel to assist the board and department in the administration and enforcement of this act.

History: En. Sec. 3, Ch. 243, L. 1953; amd. Sec. 115, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment deleted the first two paragraphs of the section relating to creation of the state board of nursing; substituted "Board of Nursing" in subsec-

tion (1) for "Montana State Board of Nursing"; substituted "department" for "board" in subsection (2) and at the beginning of the second clause in subsection (3); inserted "and department" near the end of subsection (3); and made minor changes in phraseology, punctuation and style.

### 66-1224. Repealed.

#### Repeal

Section 66-1224 (Sec. 4, Ch. 243, L. 1953), relating to qualifications of the

members of the state board of nursing, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-1225. Organization—duties and powers—separation of records responsive to functions of board—dual administrations to be exclusive of each other.** (1) The board—practical nursing administration, shall meet annually in the month of July and shall elect from among the eight (8) members a president and a secretary, each of whom is a professional nurse. The board—practical nursing administration, shall hold other meetings when necessary to transact its business. The board—professional nursing administration, shall meet annually in July and shall hold other meetings when necessary to transact its business. A majority of the board, as separately constituted for each administration, including in the majority at least one officer of the board, constitutes a quorum at any meeting; however, when sitting as the practical nursing administration, a quorum consists of a minimum of two (2) practical nurse members and three (3) professional nurse members, including one board officer. The department shall keep separate and complete minutes and records of the respective ad-

ministration meetings and rules and orders promulgated by each administration of the board, and each administration shall exercise its functions, powers, and duties exclusive of the other, except for the identity and membership provided in this act.

(2) The board under each administration may make rules necessary to enable the respective administrations to administer this act. The board under each administration shall prescribe curricula and standards for schools and courses preparing persons for registration and licensure under this act. It shall provide for surveys of schools and courses at times it considers necessary. It shall approve schools and courses that meet the requirements of this act and of the board. It shall evaluate and approve courses for affiliation of student nurses. The department shall, subject to section 82A-1603, examine, issue to, and renew licenses of qualified applicants. The board shall conduct hearings on charges calling for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list. It shall cause the prosecution of persons violating this act and may incur necessary expenses for this.

(3) The board under each administration may adopt and the department shall publish forms for use by applicants and others, including license, certificate, and identity forms, and other appropriate forms and publications convenient for the proper administration of this act, and the board may fix reasonable fees for incidental services, all within the subject matter delegated to each administration by this act. Forms shall make clear reference to the administration for which the form is intended.

(4) Unless the context requires otherwise, the powers and duties enumerated in this act shall be exercised and performed by the board—professional nursing administration, in all matters relating to professional nurses or professional nursing education, and shall be exercised and performed by the board inclusive of the practical nursing administration in all matters relating to practical nurses and practical nursing education. The officers of the board shall also be the officers of the board inclusive of the practical nursing administration.

**History:** En. Sec. 5, Ch. 243, L. 1953; amd. Sec. 116, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "board" for "Montana state board of nursing" throughout the section; deleted "inclusive of the" before "practical nursing administration" in the first two sentences of subsection (1); substituted "department" for "Montana state board of nursing" at the beginning of the last sentence of subsection (1); substituted "department" for

"board" and inserted "subject to section 82A-1603" in the next-to-last sentence of subsection (2); deleted a sentence near the end of subsection (2) giving the board power to subpoena and compel attendance of witnesses; inserted "the department shall" before "publish forms" in the first sentence of subsection (3); deleted two paragraphs relating to the appointment and qualifications of an executive secretary; and made minor changes in phraseology, punctuation and style.

**66-1226. Reimbursement for expenses—compensation.** Each member of the board shall be paid mileage as provided in section 59-801 and actual and necessary expenses, and in addition, fifteen dollars (\$15) per day for each day actually engaged in the discharge of duties under this act, including the time spent in actual attendance at a meeting of the board



and in direct travel to and from meetings, and a reasonable number of days for the preparation and administration of examinations.

**History:** En. Sec. 6, Ch. 243, L. 1953; amd. Sec. 117, Ch. 350, L. 1974.

substituted "mileage as provided in section 59-801 and actual and necessary expenses" for "hotel, travel and other necessary expenses"; and made minor changes in phraseology and punctuation.

#### Amendments

The 1974 amendment substituted "board" for "Montana state board of nursing";

**66-1227. Qualifications of applicants for license to practice professional nursing.** An applicant for a license to practice as a registered professional nurse shall submit to the department written evidence, verified by oath, that the applicant:

(1) Has successfully completed at least an approved four (4) year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) Has completed the basic professional curriculum in an approved school of nursing and holds a diploma therefrom; and

(3) Meets other qualification requirements the board, acting under the professional nursing administration, prescribes.

**History:** En. Sec. 7, Ch. 243, L. 1953; amd. Sec. 118, Ch. 350, L. 1974.

superintendent of public instruction" in subdivision (1) for "department of public instruction"; inserted "acting under the professional nursing administration" after "board" in subdivision (3); and made minor changes in phraseology and punctuation.

#### Amendments

The 1974 amendment substituted "department" in the first sentence for "board, acting under the professional nursing administration"; substituted "office of the

**66-1228. License—by examination—by endorsement without examination—license fees.** (1) An applicant for a license to practice professional nursing is required to pass a written examination in subjects the board, acting under the professional nursing administration, determines. A written examination may be supplemented by an oral or practical examination. On successfully passing the examination, the department shall issue to the applicant a license to practice nursing as a registered professional nurse. The applicant shall pay a fee of twenty-five dollars (\$25) at the time the application is submitted, which shall be returned to the applicant if the application is withdrawn not later than five (5) days prior to the date of examination, or if the examination is not taken, subject to deduction by the department of one dollar (\$1) per subject of the examination which shall be retained by the department.

(2) The board—professional nursing administration, may issue a license to practice nursing as a registered professional nurse without examination, to an applicant who has been licensed or registered as a professional nurse under the laws of another state, territory, or country, if in the opinion of the board the applicant meets the qualifications required of registered nurses in this state at the time the applicant graduated from a school of nursing. The applicant shall pay a fee of twenty-five dollars (\$25) at the time the application is submitted, which shall be returned to the applicant if the application is withdrawn not later than five (5)

days prior to final submission of the application to the board, subject to deduction of five dollars (\$5), to be retained by the department.

(3) An applicant may, pending application for a professional nursing license under subsection (2) of this section, practice professional nursing as an employee of a physician, or in a hospital or public health agency for a period not longer than three (3) months from the date the department acknowledges receiving from the nurse a completed statement, on a form provided by the department, of intention to practice. The statement shall consist of an affidavit by the nurse; and an affidavit by the physician employer or by the administrator, assistant administrator, or director of nursing of a hospital or public health agency where the nurse intends to practice professional nursing. The affidavit of the nurse and the affidavit of the physician employer or administrator, assistant administrator or director of nursing of the hospital or public health agency shall contain the information deemed by the board necessary for the statement. This subsection does not permit the nurse to practice for more than a three (3) month period, or in any event, after being notified by the board, through the department, that the application for a license has been denied, or, in all cases, after being notified by the board, through the department, to cease and desist this practice. Notice shall be given by registered or certified mail to the address of the applicant as it appears in the statement of the applicant.

**History:** En. Sec. 8, Ch. 243, L. 1953; amd. Sec. 1, Ch. 195, L. 1963; amd. Sec. 3, Ch. 291, L. 1967; amd. Sec. 119, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "board" throughout the section; inserted "through the department" after "board" in two places near the end of subsection (3); and made minor changes in phraseology, punctuation and style.

### 66-1230. Repealed.

#### Repeal

Section 66-1230 (Sec. 10, Ch. 243, L. 1953), relating to nurses registered under

prior law, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-1231. Qualifications of applicants for licensed practical nurse.** An applicant for a license to practice as a licensed practical nurse shall submit to the department written evidence, verified by oath, that the applicant:

(1) Has successfully completed at least an approved four (4) year high school course of study, or the equivalent as determined by the office of the superintendent of public instruction;

(2) Has successfully completed the prescribed curriculum in an approved school of practical nursing and holds a diploma or certificate therefrom; and

(3) Meets other qualification requirements the board, acting under the practical nursing administration, prescribes.

**History:** En. Sec. 11, Ch. 243, L. 1953; amd. Sec. 4, Ch. 291, L. 1967; amd. Sec. 120, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "department" in the first sentence for "board,

acting under the practical nursing administration"; substituted "office of the superintendent of public instruction" in subdivision (1) for "state department of public instruction"; and made minor changes in phraseology.

**66-1232. License of practical nurse by examination—by endorsement without examination.** (1) An applicant for a license to practice as a practical nurse is required to pass a written examination in subjects as the board, acting under the practical nursing administration, determines. A written examination may be supplemented by an oral or practical examination. On successfully passing the examination the department shall issue to the applicant a license to practice as a licensed practical nurse.

(2) The board—practical nursing administration, may issue a license to practice as a licensed practical nurse without examination to an applicant who has been licensed or registered as a licensed practical nurse or person entitled to perform like services under a different title under the laws of another state, territory, or country, if in the opinion of the practical nursing administration the applicant meets the requirements for practical nurses in this state.

(3) An applicant may, pending application for a practical nursing license under subsection (2) of this section, practice practical nursing as an employee of a physician or in a hospital or public health agency for a period of not longer than three (3) months from the date the department acknowledges receiving from the practical nurse a completed statement, on a form provided by the department, of intention to practice. The statement shall consist of an affidavit by the practical nurse; and an affidavit by the physician employer or by the administrator, assistant administrator, or director of nursing of a hospital or public health agency where the practical nurse intends to practice practical nursing. The affidavit of the nurse and the affidavit of the physician employer or administrator, assistant administrator, or director of nursing of the hospital or public health agency shall contain the information considered by the board necessary for the statement. This subsection does not permit the nurse to practice for more than a three (3) month period, or in any event, after being notified by the board, through the department, that the application for a license has been denied, or in all cases, after being notified by the board, through the department, to cease and desist this practice. Notice shall be given by registered or certified mail to the address of the applicant as it appears in the statement of application.

**History:** En. Sec. 12, Ch. 243, L. 1953; amd. Sec. 5, Ch. 391, L. 1967; amd. Sec. 121, Ch. 350, L. 1974.

#### **Amendments**

The 1974 amendment substituted "department" in subsection (1) for "Montana

state board of nursing—practical nursing administration"; substituted "board" in subsection (2) for "Montana state board of nursing"; substituted "department" in two places in subsection (3) for "board"; and made minor changes in phraseology, punctuation and style.

### **66-1233. Repealed.**

#### **Repeal**

Section 66-1233 (Sec. 13, Ch. 243, L. 1953; Sec. 6, Ch. 291, L. 1967), relating to waiver of certain requirements for li-

censing practical nurses before July 1, 1970, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-1234. Fee.** An applicant for a license to practice as a licensed practical nurse shall pay a fee of twenty-five dollars (\$25) to the department at the time the application is submitted, which fee shall be returned



to the applicant if the application is withdrawn not later than five (5) days prior to the date of examination or the final submission to the board of application for endorsement without examination, subject to a deduction of five dollars (\$5) to be retained by the department.

**History:** En. Sec. 14, Ch. 243, L. 1953; amd. Sec. 2, Ch. 195, L. 1963; amd. Sec. 122, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "board" in two places; and made minor changes in phraseology and style.

**66-1236. Renewal of license.** (1) The license of a person licensed under this act must be annually renewed. Before December 1 of each year, the department shall mail an application form for renewal of license to every person to whom a license was issued or renewed during the year. The applicant shall carefully complete and subscribe the application form and return it to the department with a renewal fee of five dollars (\$5) before January 1. On receipt of the application and fee the department shall verify the accuracy of the application against its record, and from other sources the board considers reliable, and issue to the applicant a certificate of renewal for the current year beginning January 1 and expiring December 31, following. The certificate of renewal renders the holder a legal practitioner of nursing for the period stated in the certificate of renewal.

(2) A licensee who allows his license to lapse by failing to renew the license may be reinstated by the board on satisfactory explanation for the failure to renew license and on payment of the current renewal fee prescribed by the board.

(3) A person practicing nursing during the time following the date his license has expired is an illegal practitioner and is subject to the penalties provided for violations of this act.

**History:** En. Sec. 16, Ch. 243, L. 1953; amd. Sec. 3, Ch. 195, L. 1963; amd. Sec. 123, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "Before

December 1" for "On or before December first" in subsection (1); substituted "department" for "board" throughout subsection (1); and made minor changes in phraseology, punctuation and style.

**66-1237. Disposition of fees.** Fees and fines collected by the department under this act shall be deposited in the earmarked revenue fund for the use of the board subject to section 82A-1603(6).

**History:** En. Sec. 17, Ch. 243, L. 1953; amd. Sec. 118, Ch. 147, L. 1963; amd. Sec. 124, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment rewrote this section. For prior version, see parent volume.

**66-1238. Schools of nursing—application for approval.** An institution desiring to conduct a school of professional or practical nursing shall apply to the department, and submit evidence that:

(1) It is prepared to carry out the prescribed basic professional nursing curriculum or the prescribed curriculum for practical nursing, as the case may be; and

(2) It is prepared to meet other standards established by this law and by the board.

**History:** En. Sec. 18, Ch. 243, L. 1953; amd. Sec. 125, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "de-

partment" in the first sentence for "board under the appropriate administration"; substituted "board" in subdivision (2) for "Montana state board of nursing"; and made a minor change in phraseology.

**66-1239. Survey and approval—secretary.** (1) A survey of the institution or institutions with which the school is to be affiliated shall be made by the department, which shall submit a detailed written report of the survey to the board. If, in the opinion of the board, the requirements for an approved school of nursing (professional or practical) are met, it shall approve the school as an approved school of nursing.

(2) When the board determines that an approved school of nursing is not maintaining the standards required by law and by the board, notice in writing specifying the defect shall be immediately given to the school. A school which fails to correct these conditions to the satisfaction of the board within a reasonable time shall be removed from the list of approved schools of nursing.

(3) Any secretary hired by the department to provide services to the board in connection with the board's duties of prescribing curricula and standards for nursing schools, making surveys of and approving schools and courses, evaluating and approving courses for affiliation of student nurses, and reviewing qualifications of applicants for licensure for the board shall be:

- (a) A citizen of the United States;
- (b) A graduate of an approved school of nursing;
- (c) A holder of at least a bachelor's degree;
- (d) A registered professional nurse with at least five (5) years' experience in teaching or administration in an approved school of nursing.

**History:** En. Sec. 19, Ch. 243, L. 1953; amd. Sec. 126, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "de-

partment" in subsection (1) for "executive secretary or other authorized employee of the board"; added subsection (3); and made minor changes in phraseology, punctuation and style.

**66-1240. Grounds for discipline.** The board, acting under the appropriate administration, may deny, revoke or suspend a license to practice nursing or discipline a licensee on proof that the person:

- (1) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing;
- (2) Is guilty of a crime or gross immorality;
- (3) Is unfit or incompetent by reason of negligence, habit, or other causes;
- (4) Is habitually intemperate or is addicted to the use of habit-forming drugs;
- (5) Is mentally or physically incompetent;
- (6) Is guilty of unprofessional conduct;
- (7) Has willfully or repeatedly violated this act; but only after compliance with section 66-1241.

**History:** En. Sec. 20, Ch. 243, L. 1953; amd. Sec. 127, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment deleted from the end of subdivision (7) "with respect to

written, verified complaint, notice of hearing, and personal service of complaint and notice on the person charged, and public

hearing before the proper board"; and made minor changes in phraseology and punctuation.

**66-1241. Disciplinary proceedings.** (1) On filing a sworn complaint in writing with the board, charging a person with violation of section 66-1240 as a ground for disciplinary action, the board shall fix a time and place for a public hearing before the board to be convened in membership as the five-member board for professional nurses, or as the eight-member board for practical nurses, depending on the professional or practical status of the licensee, nurse, or person against whom complaint is made.

(2) If the person charged is found guilty of the charges the board may refuse to grant a license to the applicant or may revoke or suspend a license issued to a licensee.

(3) A revoked or suspended license may be reissued after one (1) year, in the discretion of the board.

History: En. Sec. 21, Ch. 243, L. 1953; amd. Sec. 128, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "board" in subsection (1) for "executive secretary

of the board" after "shall fix a time"; deleted portions of the section relating to service of notice on an accused, procedure at the hearing, and judicial review (see parent volume); and made minor changes in phraseology, punctuation and style.

#### 66-1245. Repealed.

##### Repeal

Section 66-1245 (Sec. 26, Ch. 243, L. 1953), relating to co-ordination with pre-

vious board and transfer of records and funds, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-1246. Licensing of midwives.** (1) A person licensed under section 66-1228 who holds a certificate in nurse-midwifery from the American College of Nurse-Midwives may practice midwifery upon approval by the board-professional nursing administration of an amendment to her license granting a certificate of nurse-midwifery. The board shall grant a certificate of nurse-midwifery to a person who submits written verification of her certification by the American College of Nurse-Midwives and who meets such other qualification requirements as the board may prescribe.

(2) The board-professional nursing administration may give temporary approval to practice nurse-midwifery for up to four (4) months to a person who has taken the American College of Nurse-Midwives national certification examination, pending her receipt of official notification of the results of the examination.

History: En. 66-1246 by Sec. 2, Ch. 97, L. 1974.

to license registered nurses as midwives, and amending section 66-1012, R. C. M. 1947.

#### Title of Act

An act authorizing the board of nurses

### CHAPTER 13—OPTOMETRY—REGULATION

#### Section

66-1301.1. Definitions.

66-1302. Provisions regulating practice of optometry.

66-1303. Rules—seal.

66-1304. Officers of board—meetings.



- 66-1305. Examinations—admission to practice—nonresidents.
- 66-1307. Renewal of registration—revocation—fees.
- 66-1308. Registration of certificate in county.
- 66-1311. Compensation of board.
- 66-1312. Revocation of certificate for cause.
- 66-1314. Penalty for violations.
- 66-1318. Attendance at continuing educational programs prerequisite for license renewal—exemption.

**66-1301.1. Definitions.** Unless the context requires otherwise, in this act:

(1) "Board" means the board of optometrists, provided for in section 82A-1602.19; and

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

**History:** En. 66-1301.1 by Sec. 129, Ch. 350, L. 1974.

**66-1302. (3156) Provisions regulating practice of optometry.** (1) It is unlawful for a person:

(a) To practice optometry in this state unless he has first obtained a certificate of registration, and filed it or a certified copy with the county clerk and recorder of the county of his residence;

(b) To sell, barter, or offer to sell or barter a certificate of registration issued by the department;

(c) To purchase or procure by barter a certificate of registration with intent to use it as evidence of the holder's qualification to practice optometry;

(d) To materially alter with fraudulent intent a certificate of registration;

(e) To use or attempt to use a certificate of registration which has been purchased, fraudulently issued, counterfeited, or materially altered as a valid certificate of registration;

(f) To practice optometry under a false or assumed name;

(g) To willfully make a materially false statement in an application for an examination by the department or for a certificate of registration;

(h) To advertise by displaying a sign or by otherwise holding himself out to be an optometrist without having at the time a valid certificate of registration;

(i) To replace or duplicate ophthalmic lenses with or without a prescription or to dispense ophthalmic lenses from prescriptions, without having at the time a valid certificate of registration as an optometrist; however, this subsection does not prevent an optical mechanic from doing the merely mechanical work on an ophthalmic lens which is ordered on a prescription signed by a registered optometrist and is dispensed only by the optometrist or a person employed by the optometrist and who does so in the office of and under the direct personal supervision of an optometrist;

(j) To take or make measurements for the purpose of fitting or adapting ophthalmic lenses to the human eye, without having at the time a valid certificate of registration. A person who takes or makes measurements or uses mechanical devices for this purpose or who in the sale of spectacles,

eyeglasses, or lenses uses, in the testing of the eyes, lenses other than the lenses actually sold, is practicing optometry. However, this section does not apply to the prescriptions of qualified optometrists when sent to a recognized optical laboratory.

(k) To advertise at a price, or stated terms of a price, or as being free, the following: The examination or treatment of the eyes, furnishing of optometrical services, or furnishing a lens, lenses, contact lens, contact lenses, glasses, frames, or fitting thereof. However, this subdivision does not apply to advertising goggles, sunglasses, colored glasses, or occupational eye-protective devices, if they are not made with refractive values and are not advertised in connection with the practice of optometry or professional service.

(1) To adapt a lens to direct contiguous contact to the human eyeball without having at the time a valid certificate of registration as an optometrist.

(2) When the board has reasonable cause to believe that a person is violating this section, or a rule issued under this chapter, it may, in addition to other remedies provided in this chapter, bring an action for injunctive relief in district court in the county where the violation occurs to enjoin the person from engaging in or continuing the violation. The department may employ legal counsel to prosecute these actions. In these actions, and on notice and hearing, an order or judgment may be entered awarding a temporary restraining order or final injunction as considered proper by the judge of the district court in the county where the violation occurred. This chapter does not apply to physicians and surgeons authorized to practice under the laws of this state nor to a person employed in the office of and acting under the direct personal supervision of a physician or surgeon, nor to a person excepted from this chapter by section 66-1316.

History: En. Ch. 138, L. 1907; Sec. 1608, Rev. C. 1907; re-en. Sec. 3156, R. C. M. 1921; amd. Sec. 1, Ch. 171, L. 1925; amd. Sec. 1, Ch. 130, L. 1939; amd. Sec. 2, Ch. 252, L. 1959; amd. Sec. 1, Ch. 88, L. 1967; amd. Sec. 130, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment deleted a clause from subdivision (1)(a) relating to optometrists in practice on the effective date of the original act; substituted "depart-

ment" throughout the section for "state board of optometry" and "board"; substituted "this chapter" in the last sentence of subsection (2) for "this act"; substituted "person employed in the office of and acting under the direct supervision of a physician or surgeon" in the last sentence of subsection (2) for "person acting under the supervision of a physician or surgeon"; and made minor changes in phraseology, punctuation and style.

**66-1303. (3157) Rules—seal.** (1) The board may adopt rules for the regulation, conduct, supervision, and procedure governing all applicants for certificates of registration as optometrists and the practice of optometry not inconsistent with the provisions of this act.

(2) The board shall have a common seal.

History: En. Ch. 138, L. 1907; Sec. 1609, Rev. C. 1907; re-en. Sec. 3157, R. C. M. 1921; amd. Sec. 2, Ch. 171, L. 1925; amd. Sec. 2, Ch. 130, L. 1939; amd. Sec. 131, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment deleted portions of

the section relating to the creation of the Montana state board of examiners in optometry and the qualifications and terms of office of its members; and made minor changes in phraseology, punctuation and style.

**66-1304. (3158) Officers of board—meetings.** The board shall annually choose from its members a president and secretary, both of whom may administer oaths and take affidavits. The board shall meet at least once each year at Helena, or some other place designated by the president, on the fourth Monday of July, and in addition, whenever, and wherever the president and secretary call a meeting. The department shall keep a record of the proceedings of the board, which shall be open to public inspection.

**History:** En. Ch. 138, L. 1907; Sec. 1610, Rev. C. 1907; re-en. Sec. 3158, R. C. M. 1921; amd. Sec. 3, Ch. 171, L. 1925; amd. Sec. 1, Ch. 44, L. 1927; amd. Sec. 132, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "department" in the last sentence for "secretary of said board"; and made minor changes in phraseology, punctuation and style.

**66-1305. (3159) Examinations—admission to practice—nonresidents.**

(1) The board shall adopt rules relative to and governing the qualifications of applicants for certificates of registration as optometrists; and if the applicant does not meet the requirements of the rules, he is not eligible to take an examination to practice optometry in this state. If the applicant meets the requirements of the rules, he, must pass an examination given by the department, subject to section 82A-1603. Examinations shall be practical in character and designed to ascertain the applicant's fitness to practice the profession of optometry, and shall be conducted in the English language. The department shall publish and distribute the examination requirements for a certificate to practice optometry in this state. The board may accept the grades an applicant has received in the written examinations given by the national board of examiners in optometry.

(2) No person is eligible to take the examination unless he is eighteen (18) years of age, a citizen of the United States, and of good moral character.

(3) No person is eligible to take the examination unless he has certificates of graduation from an accredited high school and from a school of optometry in which the practice and science of optometry is taught in a course of study covering eight (8) semesters, or four (4) years, of actual attendance and which is accredited by the international association of boards of examiners in optometry. Instead of the certificates of graduation an applicant for examination may, with like effect, furnish an affidavit that he has practiced optometry exclusively for a period of at least six (6) years in some other state or states.

(4) A person desiring to be examined in optometry shall file an application in the manner prescribed by the board at least four (4) weeks before the examination is held, and a fee of twenty-five dollars (\$25) shall accompany the application.

(5) A person successfully passing the examination shall be registered in a register, which shall be kept by the department, and on the payment of a fee of ten dollars (\$10) shall receive a certificate of registration signed by the members of the board.

(6) If an applicant for a certificate of registration has been admitted to practice optometry in another state, and has attained an average of



seventy-five per cent (75%) in his examination in the other state, he may, at the discretion of the board, be granted a certificate to practice his profession in this state, without examination, on payment of all fees, if the state from which the applicant comes offers equal privileges to applicants for certificates of registration from this state.

**History:** En. Ch. 138, L. 1907; Sec. 1611, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1917; re-en. Sec. 3159, R. C. M. 1921; amd. Sec. 4, Ch. 171, L. 1925; amd. Sec. 3, Ch. 130, L. 1939; amd. Sec. 3, Ch. 252, L. 1959; amd. Sec. 24, Ch. 94, L. 1973; amd. Sec. 133, Ch. 350, L. 1974.

#### Amendments

The 1973 amendment reduced the minimum age specified in subsection 2 from twenty-one to eighteen years.

The 1974 amendment substituted "board" in the first sentence of subsection (1) for "board of examiners"; substituted "department" in the second sentence of subsection (1) for "board of examiners" and added "subject to section 82A-1603"; substituted "department" for "board" in the fourth sentence of subsection (1) and in subsection (5); and made minor changes in phraseology, punctuation and style.

### 66-1306. Repealed.

#### Repeal

Section 66-1306 (En. Ch. 138, L. 1907), relating to issuing certificates to persons

already engaged in practice, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-1307. (3161) Renewal of registration—revocation—fees.** A registered optometrist who desires to continue the practice of optometry in this state shall annually before July 2 of each year pay to the department a renewal fee not to exceed the sum of fifty dollars (\$50) in return for which a renewal of registration shall be issued. If a person fails or neglects to procure his annual renewal of registration, his certificate of registration shall be revoked by the board; however, no certificate of registration may be revoked without ninety (90) days' notice having been given to the delinquent, who within this period may renew his certificate of registration on the payment of the renewal fee with a penalty of thirty-five dollars (\$35).

**History:** En. Ch. 138, L. 1907; Sec. 1613, Rev. C. 1907; amd. Sec. 2, Ch. 128, L. 1917; re-en. Sec. 3161, R. C. M. 1921; amd. Sec. 4½, Ch. 171, L. 1925; amd. Sec. 4, Ch. 252, L. 1959; amd. Sec. 120, Ch. 147, L. 1963; amd. Sec. 1, Ch. 75, L. 1971; amd. Sec. 134, Ch. 350, L. 1974.

#### Amendments

The 1971 amendment increased the maximum renewal fee specified in the first

sentence from \$20 to \$50, and increased the penalty specified at the end of the section from \$25 to \$35.

The 1974 amendment substituted "department" for "secretary of said board" in the first sentence; deleted "The board may present to registered optometrists at least one annual educational program"; and made minor changes in phraseology.

**66-1308. (3162) Registration of certificate in county.** Recipients of the certificate of registration shall present it for record to the county clerk and recorder of the county in which they reside, and shall pay a fee of one dollar (\$1) to the county clerk and recorder for recording it. The county clerk and recorder shall record the certificate in a book to be provided by him for that purpose. A person licensed, who moves from one county to another in this state, shall, before engaging in the practice of optometry in the other county, obtain from the county clerk and recorder of the county in which the certificate of registration is recorded a certified copy of the record, or else obtain a new certificate of registration from the

department and shall before commencing practice in the county, file the certificate for record with the county clerk and recorder of the county to which he moves, and pay the county clerk and recorder, for recording it, a fee of one dollar (\$1). A failure, neglect, or refusal on the part of a person holding the certificate or copy of record to file it for record, for six (6) months after issuance, forfeits it. The department is entitled to a fee of one dollar (\$1) for the reissue of a certificate and the county clerk and recorder of a county is entitled to a fee of one dollar (\$1) for making and certifying the copy of the record of a certificate.

**History:** En. Ch. 138, L. 1907; Sec. 1614, Rev. C. 1907; re-en. Sec. 3162, R. C. M. 1921; amd. Sec. 4, Ch. 130, L. 1939; amd. Sec. 135, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "board of examiners" in the third sentence, and for "board" in the last sentence; and made minor changes in phraseology, punctuation and style.

### 66-1309. (3163) Repealed.

#### Repeal

Section 66-1309 (En. Ch. 138, L. 1907), relating to failure to apply for a certi-

cate within six months after passage of the original act, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-1311. (3165) Compensation of board.** Each member of the board may receive as compensation the sum of twenty-five dollars (\$25) and necessary expenses for each day actually engaged in the duties of his office. Money collected by the department shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

**History:** En. Ch. 138, L. 1907; Sec. 1617, Rev. C. 1907; re-en. Sec. 3165, R. C. M. 1921; amd. Sec. 5, Ch. 171, L. 1925; amd. Sec. 5, Ch. 252, L. 1959; amd. Sec. 121, Ch. 147, L. 1963; amd. Sec. 23, Ch. 93, L. 1969; amd. Sec. 136, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "board" and "board" for "board of examiners in optometry" in the last sentence; inserted "subject to section 82A-1603(6)"; deleted a third sentence relating to reports by the board; and made minor changes in phraseology, punctuation and style.

**66-1312. (3166) Revocation of certificate for cause.** The board may revoke a certificate of registration for conviction of crime, habitual drunkenness, contagious or infectious disease, gross immorality, gross ignorance or inefficiency in his profession, or unprofessional conduct. Unprofessional conduct includes obtaining a fee by fraud or misrepresentation; employing directly or indirectly a suspended or unlicensed optometrist to perform work covered by this act; directly or indirectly accepting employment to practice optometry from a person not having a valid certificate of registration as an optometrist, or accepting employment to practice optometry from a company or corporation, or accepting employment to practice optometry for a company or corporation; permitting another to use his certificate of registration; soliciting or sending a solicitor from house to house; treatment or advice in which untruthful or improbable statements are made; professing to cure disease; advertising in which ambiguous or misleading statements are made; or the use in advertising of the expression "eye specialist" or "specialist on eyes" in connection with

the name of an optometrist. This act does not prohibit legitimate or truthful advertising by a registered optometrist. Before a certificate is revoked, the holder shall be given a notice and an opportunity for a hearing.

History: En. Ch. 138, L. 1907; Sec. 1618, Rev. C. 1907; amd. Sec. 3, Ch. 128, L. 1917; re-en. Sec. 3166, R. C. M. 1921; amd. Sec. 6, Ch. 171, L. 1925; amd. Sec. 5, Ch. 130, L. 1939; amd. Sec. 137, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment rewrote the last sentence relating to notice of hearing; deleted a sentence relating to appeal of a decision of the board (for prior law, see parent volume); and made minor changes in phraseology, punctuation and style.

**66-1314. (3167) Penalty for violations.** A person who violates this act or the rules of the board is guilty of a misdemeanor, and on conviction shall be fined not less than two hundred dollars (\$200) and not more than five hundred dollars (\$500), or imprisoned in the county jail not exceeding six (6) months, or both fined and imprisoned. Fines collected shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

History: En. Ch. 138, L. 1907; Sec. 1619, Rev. C. 1907; re-en. Sec. 3167, R. C. M. 1921; amd. Sec. 8, Ch. 171, L. 1925; amd. Sec. 6, Ch. 130, L. 1939; amd. Sec. 122, Ch. 147, L. 1963; amd. Sec. 138, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "board" for "state board of examiners"; added "subject to section 82A-1603(6)"; and made minor changes in phraseology, punctuation and style.

**66-1318. Attendance at continuing educational programs prerequisite for license renewal—exemption.** A licensed optometrist in active practice in this state is required to attend not less than twelve (12) hours annually of scientific clinics, forums, or optometric educational studies as may be provided or approved by the board as a prerequisite for his license renewal. A copy of this section shall be sent to each licensee by the department prior to the license renewal date each year. The board may exempt from this requirement those licensees who submit satisfactory proof that they were prevented from attending educational programs during the preceding year due to illness or for other good reason.

History: En. 66-1318 by Sec. 1, Ch. 79, L. 1971; amd. Sec. 139, Ch. 350, L. 1974.

educational programs for not less than twelve (12) hours annually.

#### Title of Act

An act to require each Montana licensed optometrist to attend continuing

#### Amendments

The 1974 amendment substituted "copy of this section" for "copy of this act" in the second sentence; and made minor changes in phraseology.

## CHAPTER 14—OSTEOPATHY—REGULATION OF PRACTICE

### Section

66-1401. [Transferred.]

66-1401.1. Definitions.

66-1402. Duties of board and department.

66-1403. Regulation—osteopathic licenses—educational qualifications—renewal.

66-1404. Temporary certificates.

66-1405. Subjects of examination.

66-1410. Compensation of board—deposit of fees.

66-1411. Graduates may be licensed without examination—practitioners from other states.



**66-1401. [Transferred.]****Compiler's Notes**

Section 140, Ch. 350, Laws of 1974 re-numbered this section as sec. 82A-1602.20.

**66-1401.1. Definitions.** Unless the context requires otherwise, in this act: (1) "Board" means the board of osteopathic physicians, provided for in section 82A-1602.20; and,

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

**History:** En. 66-1401.1 by Sec. 141, Ch. 350, L. 1974.

**66-1402. (3126) Duties of board and department.** (1) The board shall elect a president, a secretary, and treasurer on the first Tuesday in March each year, from among its number, and shall have a seal, and its president and secretary may administer oaths.

(2) The department shall, subject to section 82A-1603, hold examinations at the state capitol on the first Tuesday in March and September of each year.

(3) The board shall hold meetings as necessary, each session not to exceed three (3) days.

(4) The department shall issue a certificate of qualification to applicants having a diploma from a legally recognized and regularly conducted school of osteopathy at the time it was issued, or who pass required examinations under section 66-1404. The certificate shall be signed by the president and secretary of the board, and attested by its seal, and is conclusive of the right of the lawful holder to practice osteopathy in this state.

(5) The department shall keep a record of the board's proceedings; a register of applicants for a license, including his name, age, and time spent in the study and practice of osteopathy, and the name and location of the college of osteopathic medicine from which the applicant holds a diploma; and a register of the names of applicants licensed and rejected under this act. These books are prima facie evidence of matters recorded.

**History:** En. Sec. 2, p. 48, L. 1901; rep. and re-en. Sec. 2, Ch. 51, L. 1905; re-en. Sec. 1595, Rev. C. 1907; re-en. Sec. 3126, R. C. M. 1921; amd. Sec. 142, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "board" for "board of osteopathic examiners" in subsection (1); substituted subsections (2)

and (3) for "Said board shall hold meetings for the examinations at the state capitol on the first Tuesday in March and September of each year, and such other meetings as may be deemed necessary, each session thereof not to exceed three days"; substituted "department" for "board" in subsections (4) and (5); and made minor changes in phraseology, punctuation and style.

**66-1403. (3127) Regulation—osteopathic licenses—educational qualifications—renewal.** (1) It is unlawful for a person to practice osteopathy in this state without a license from the department. An applicant applying for licensure shall be a person of good moral character. An applicant shall present evidence to the board that he has completed the following educational and professional requirements: four (4) years of high

school or its scholastic equivalent; at least two (2) years preprofessional college education in an accredited college or university; and four (4) years professional education in an osteopathic college conforming to the minimum educational standards for osteopathic colleges established by the American osteopathic association and which is approved by the board. Application shall be made on forms prescribed by the board and furnished by the department. An applicant who fails the examination is entitled to a second examination without charge.

(2) A person holding a certificate to practice under this act and who is in active practice in this state, shall before April 1 of each year pay a renewal fee of fifteen dollars (\$15) to the department; and a person holding a certificate to practice under this act, who is not in active practice, shall before April 1 of each year pay a renewal fee of seven dollars and fifty cents (\$7.50) to the department. The department shall before March 15 of each year send a notice to each person holding a valid certificate to practice under this act and from whom a fee is due stating that the fee is due.

(3) The certificate to practice under this act automatically becomes void when the renewal fee is not paid at the time named. However, the board may reinstate a practitioner whose certificate has lapsed on payment of back renewal fees or on payment of fifty dollars (\$50) if the lapsed fees exceed that amount.

**History:** En. Sec. 3, p. 49, L. 1901; rep. and re-en. Sec. 3, Ch. 51, L. 1905; re-en. Sec. 1956, Rev. C. 1907; amd. Sec. 1, Ch. 124, L. 1919; re-en. Sec. 3127, R. C. M. 1921; amd. Sec. 1, Ch. 79, L. 1925; amd. Sec. 1, Ch. 108, L. 1953; amd. Sec. 1, Ch. 206, L. 1967; amd. Sec. 143, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted refer-

ences to department throughout the section for references to the board of osteopathic examiners and its secretary; substituted "forms prescribed by the board and furnished by the department" in subsection (1) for "forms furnished by the board"; substituted "before April 1" in subsection (2) for "on or before the first day of April"; and made minor changes in phraseology, punctuation and style.

**66-1404. (3128) Temporary certificates.** The secretary of the board may authorize the department, upon examination, to issue a certificate to an applicant to practice osteopathy until the next meeting of the board when he shall report the facts, at which time the temporary certificate expires, but the temporary certificate may not be issued after the board has once rejected the applicant.

**History:** En. Sec. 4, p. 49, L. 1901; rep. and re-en. Sec. 4, Ch. 51, L. 1905; re-en. Sec. 1597, Rev. C. 1907; re-en. Sec. 3128, R. C. M. 1921; amd. Sec. 144, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "board" for "board of osteopathic examiners"; substituted "may authorize the department, upon examination, to issue" for "may upon examination, grant"; and made minor changes in phraseology.

**66-1405. (3129) Subjects of examination.** (1) A person commencing the practice of osteopathy in this state, in any of its branches, shall apply to the department for a license to do so, and the applicant at the time and place designated by the board, shall submit to an examination in the following subjects: anatomy, physiology, chemistry, pathology, bacteriology,

gynecology, obstetrics, and theory and practice of osteopathy, and other subjects taught in well regulated and recognized schools of osteopathy and considered advisable by the board and shall present evidence of having actually attended, as required in section 66-1403, a legally authorized and regularly conducted school of osteopathy, recognized by the board, except as otherwise provided in section 66-1402.

(2) Examination papers on subjects peculiar to osteopathy shall be graded by the department, subject to section 82A-1603. The examination shall be scientific and practical, but of sufficient severity to test the candidate's fitness to practice osteopathy.

(3) After examination the department shall issue a license to applicants who pass the examination to practice osteopathy in this state, which license shall be granted by not less than two (2) members of the board, attested by the board's seal. The fee for the examination and license is twenty dollars (\$20).

**History:** En. Sec. 5, p. 49, L. 1901; rep. and re-en. Sec. 5, Ch. 51, L. 1905; re-en. Sec. 1598, Rev. C. 1907; re-en. Sec. 3129, R. C. M. 1921; amd. Sec. 2, Ch. 108, L. 1953; amd. Sec. 145, Ch. 147, L. 1963; amd. Sec. 145, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted references to department throughout the section for references to the board or its members; inserted "subject to section 82A-1603" in subsection (2); and made minor changes in phraseology, punctuation and style.

**66-1410. (3134) Compensation of board—deposit of fees.** (1) Each of the members of the board may receive as compensation a sum not to exceed twenty dollars (\$20) for each day actually engaged in the duties of their office, together with legitimate and necessary expenses incurred in attending the meetings of the board.

(2) The fees collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

**History:** En. Sec. 10, p. 51, L. 1901; rep. and re-en. Sec. 10, Ch. 51, L. 1905; re-en. Sec. 1603, Rev. C. 1907; re-en. Sec. 3134, R. C. M. 1921; amd. Sec. 146, Ch. 147, L. 1963; amd. Sec. 2, Ch. 206, L. 1967; amd. Sec. 24, Ch. 93, L. 1969; amd. Sec. 146, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "board" in subsection (2); substituted "board" for "state board of osteopathic examiners" and added "subject to section 82A-1603(6)" to subsection (2); and made minor changes in phraseology and style.

**66-1411. (3135) Graduates may be licensed without examination—practitioners from other states.** A graduate of a reputable school of osteopathy, who has been strictly examined and licensed to practice osteopathy in another state, may be licensed to practice osteopathy in this state on production to the board of his diploma, and the license obtained in the other state, and satisfactory evidence of good moral character, and the payment of fees required of other applicants; but the board may have the applicant examined as to his qualifications.

**History:** En. Sec. 11, Ch. 51, L. 1905; re-en. Sec. 1604, Rev. C. 1907; re-en. Sec. 3135, R. C. M. 1921; amd. Sec. 147, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment made minor changes in phraseology, punctuation and style.



CHAPTER 15—PHARMACY—REGULATION OF SALE OF  
DRUGS AND MEDICINES

## Section

- 66-1501. Sale of drugs, medicines, etc., unlawful except as provided herein.  
 66-1502. Definitions.  
 66-1503. [Transferred.]  
 66-1504. Powers of board and department.  
 66-1505. Salaries and expenses of board members.  
 66-1506. Examination of applicants for registration—fees—certificates.  
 66-1507. Annual renewal of registration fees.  
 66-1508. Store license—certified pharmacy license—suspension or revocation.  
 66-1511. Poison register to be kept by pharmacists may be required by board.  
 66-1512. Revocation of license for failure to keep record or falsifying.  
 66-1521. Attorney general to be attorney for board—prosecutions—duties of county attorneys.  
 66-1521.1. Qualifications of employee hired by department.  
 66-1527. Disposition of fees and fines.

**66-1501. (3170) Sale of drugs, medicines, etc., unlawful except as provided herein.** (a) It shall be unlawful for any person to compound, dispense, vend or sell at retail, drugs, medicines, chemicals or poisons in any place other than a pharmacy, except as hereinafter provided.

(b) It shall be unlawful for any proprietor, owner or manager of a pharmacy, or any other person to permit the compounding or dispensing of prescriptions or the vending or selling at retail of drugs, medicines, chemicals, or poisons in any pharmacy except by a registered and licensed pharmacist or by an intern in the temporary absence of such pharmacist.

(c) It shall be unlawful for any person falsely to assume or pretend to the title of pharmacist or intern, unless such person has a license as such issued and in force pursuant to the terms of this act.

(d) It shall be unlawful for any person other than a licensed and registered pharmacist, or a licensed and registered intern to compound, dispense, vend or sell at retail, drugs, medicines, chemicals or poisons, except as in this act provided.

**History:** En. Sec. 640, Pol. C. 1895; re-en. Sec. 1622, Rev. C. 1907; re-en. Sec. 1, Ch. 134, L. 1915; re-en. Sec. 3170, R. C. M. 1921; amd. Sec. 1, Ch. 175, L. 1939; amd. Sec. 1, Ch. 241, L. 1971.

**Amendments**

The 1971 amendment substituted "intern" for "assistant pharmacist" throughout the section and made a minor change in phraseology.

**66-1502. (3170.1) Definitions.** Unless the context requires otherwise, in this act:

(1) "Pharmacy" means a drugstore or other established place registered by the department of professional and occupational licensing, in which prescriptions, drugs, medicines, chemicals, and poisons are compounded, dispensed, vended, or sold at retail.

(2) "Pharmacist" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons, and who may affix to his name the term REG-PH.

(3) "Intern" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons in a pharmacy having a pharmacist in charge.

(4) "Drug" means (a) articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States,

or official national formulary, or a supplement to them; (b) articles intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; (c) articles (other than food) intended to affect the structure or function of the body of man or other animals; and (d) articles intended for use as a component of an article specified in subsection (a), (b) or (c); but does not include devices or their components, parts, or accessories.

(5) "Medicine" means a remedial agent which has the property of curing, preventing, treating, or mitigating diseases, or which is used for this purpose.

(6) "Poison" means a substance which, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or which destroys living tissue with which it comes in contact.

(7) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(8) "Board" means the board of pharmacists, provided for in section 82A-1602.21.

(9) "Person" includes an individual, copartnership, corporation, or association.

(10) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

(11) "Wholesale" means a sale for the purpose of resale.

(12) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(13) "Prescription" means an order given individually for the person for whom prescribed directly from the prescriber to the furnisher or indirectly to the furnisher by means of an order signed by the prescriber and bearing the name and address of the prescriber, his license classification, the name of the patient, the name and the quantity of the drug or drugs prescribed, the directions for use and the date of its issue. These stipulations apply to both written and telephoned prescriptions.

**History:** En. Sec. 2, Ch. 175, L. 1939; amd. Sec. 1, Ch. 33, L. 1951; amd. Sec. 2, Ch. 241, L. 1971; amd. Sec. 148, Ch. 350, L. 1974.

#### Amendments

The 1971 amendment substituted "intern" for "assistant pharmacist" in subsection (c) (now subdivision (3)).

The 1974 amendment substituted "department of professional and occupational licensing" and "department" throughout

the section for "state board of pharmacy"; rewrote the definition of "Board" which read: "The term 'board' or 'state board of pharmacy' shall mean the Montana state board of pharmacy"; deleted a definition of "secretary"; inserted the definition of "Department"; deleted a statement that masculine words include the feminine and neuter, and that singular includes plural; and made minor changes in phraseology, punctuation and style.

### 66-1503. [Transferred.]

#### Compiler's Notes

Section 149, Ch. 350, Laws of 1974 renumbered this section as sec. 82A-1602.21.

**66-1504. (3174) Powers of board and department.** (1) The board shall annually elect from its members a president, vice-president, and secretary.

(2) The board shall:

(a) Regulate the practice of pharmacy in this state subject to this act;  
 (b) Determine the minimum equipment necessary in and for a pharmacy and drugstore;

(c) Regulate under therapeutic classification, the sale of drugs, medicines, chemicals, and poisons and their labeling;

(d) Regulate the quality of drugs and medicines dispensed in this state, using the United States pharmacopoeia and the national formulary, or revisions thereof, as the standards;

(e) Request the department to enter and inspect at reasonable times places where drugs, medicines, chemicals, or poisons are sold, vended, given away, compounded, dispensed, or manufactured. It is a misdemeanor for a person to refuse to permit or otherwise prevent the department from entering these places and making an inspection.

(f) Regulate the practice of interns under national standards;

(g) Revoke temporarily or permanently, licenses issued by the department to a pharmacist or intern whenever the holder of the license has obtained it by false representations or fraud, is an habitual drunkard or addicted to the use of narcotic drugs, has been convicted of a felony, has been convicted of violating the pharmacy law, or has been found guilty by the board, of incompetency in the preparation of prescriptions or guilty of gross immorality affecting the discharge of his duties as a pharmacist or assistant.

(h) Make rules for the conduct of its business.

(i) Perform other duties and exercise other powers as this act requires.

(j) Adopt and authorize the department to publish rules for carrying out and enforcing this act.

(3) The department shall license, register, and examine, subject to section 82A-1603, applicants whom the board considers qualified under this act; license pharmacies and certain stores under this act; and issue certificates of "certified pharmacy" under this act.

**History:** En. Sec. 644, Pol. C. 1895; re-en. Sec. 1626, Rev. C. 1907; re-en. Sec. 5, Ch. 134, L. 1915; re-en. Sec. 3174, R. C. M. 1921; amd. Sec. 4, Ch. 175, L. 1939; amd. Sec. 25, Ch. 93, L. 1969; amd. Sec. 3, Ch. 241, L. 1971; amd. Sec. 150, Ch. 350, L. 1974.

#### Amendments

The 1971 amendment inserted the second sentence of subdivision (b)(6) (now subdivision (2)(f)); and substituted "intern" for "assistant pharmacist" in subdivision (b)(7) (now subdivision (2)(g)).

The 1974 amendment substituted references to department throughout the section for references to the board or its representatives; deleted "a treasurer" from sub-

section (1); substituted "and secretary" in subsection (1) for "and a pharmacist, who may or may not be a member, as secretary"; inserted "Request the department" before "to enter" in subdivision (2)(e); deleted two sentences from subdivision (2)(f) relating to licensing pharmacists and pharmacies; deleted "subject to the right of any person whose license may be revoked to review by the district court of the proper county on any question of law and fact" from the end of subdivision (2)(g); deleted a subdivision relating to reporting as provided in section 82-4002; deleted "To employ necessary assistants" from subdivision (2)(h); added subdivision (3); and made minor changes in phraseology, punctuation and style.



**66-1504.1. Repealed.**

**Repeal**

Section 66-1504.1 (Sec. 12, Ch. 314, L. 1969), relating to the placement of drugs

under the Dangerous Drug Act, was repealed by Sec. 31, Ch. 412, Laws 1973.

**66-1505. (3175) Salaries and expenses of board members.** Each member of the board shall receive twenty-five dollars (\$25.00) a day as compensation for the performance of his services as a board member and shall be compensated in addition thereto for his actual and necessary expenses in attending meetings. Mileage expenses of board members will be paid pursuant to section 59-801.

History: En. Sec. 645, Pol. C. 1895; re-en. Sec. 1627, Rev. C. 1907; re-en. Sec. 6, Ch. 134, L. 1915; re-en. Sec. 3175, R. C. M. 1921; amd. Sec. 5, Ch. 175, L. 1939; amd. Sec. 26, Ch. 177, L. 1965; amd. Sec. 1, Ch. 82, L. 1969; amd. Sec. 1, Ch. 72, L. 1974; amd. Sec. 151, Ch. 350, L. 1974.

conflict, the compiler has made a composite section embodying the changes made by both amendments.

**Amendments**

Chapter 72, Laws of 1974, increased the per diem of members from \$15 to \$25; provided compensation for actual and necessary expenses while attending meetings; and inserted the second sentence.

Chapter 350, Laws of 1974, deleted a sentence relating to compensation of the secretary of the board.

**Compiler's Notes**

This section was amended twice in 1974, once by Ch. 72 and once by Ch. 350. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to

**66-1506. (3176) Examination of applicants for registration—fees—certificates.** (1) The board shall meet at least once a year to transact its business. The department shall give reasonable notice of examinations by mail, to known applicants. The department shall record the names of persons examined together with the grounds on which the right of each to examination was claimed and also the names of persons registered by examination or otherwise. The fee for an examination is twenty-five dollars (\$25) which fee may, in the discretion of the board, be returned to applicants not taking the examination.

(2) On again making payment of the fee an applicant who fails is entitled to take the next succeeding examination free of charge.

(3) The fee for registration by reciprocity is one hundred dollars (\$100).

(4) To be entitled to examination as a pharmacist, the applicant shall be a citizen of the United States, of good moral character, and a graduate of the school of pharmacy of the university of Montana or of a college or school of pharmacy recognized and approved by, or a member of, the American association of colleges of pharmacy, but the applicant may not receive a registered pharmacist's license until he has complied with the internship requirements established by the board. During this period, if the applicant has passed the examination, he shall be licensed as an intern only.

(5) The board may, in its discretion, authorize the department to grant registration without examination, to a pharmacist licensed by a board of pharmacy or a similar board of another state which accords similar recognition to licensees of this state, if the requirements for registra-

tion in the other state are, in the opinion of the board, equivalent to the requirements of this act. Every person licensed and registered under this act shall receive from the department an appropriate certificate attesting the fact, which shall be conspicuously displayed at all times in his place of business. If the holder is entitled to manage or conduct a pharmacy in this state for himself or another, the fact shall be set forth in the certificate.

**History:** En. Sec. 646, Pol. C. 1895; re-en. Sec. 1628, Rev. C. 1907; re-en. Sec. 7, Ch. 134, L. 1915; re-en. Sec. 3176, R. C. M. 1921; amd. Sec. 6, Ch. 175, L. 1939; amd. Sec. 1, Ch. 81, L. 1969; amd. Sec. 4, Ch. 168, L. 1971; amd. Sec. 4, Ch. 241, L. 1971; amd. Sec. 1, Ch. 71, L. 1974; amd. Sec. 152, Ch. 350, L. 1974.

#### Compiler's Notes

This section was amended twice in 1971, once by Ch. 168 and once by Ch. 241. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

This section was amended twice in 1974, once by Ch. 71 and once by Ch. 350. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 168, Laws of 1971, deleted "at least twenty-one (21) years of age" from the first sentence in subsection (4); and made minor changes in phraseology and style.

Chapter 241, Laws of 1971, substituted "intern" for "assistant pharmacist" throughout the section; increased the examination fee from \$15 to \$25; inserted "registered pharmacist's" before "license" near the end of the first sentence of subsection (4); and substituted "complied with the internship requirements established by the state" for "at least one (1) year of practical experience in a pharmacy which has been approved by the" at the end of the first sentence of subsection (4).

Chapter 71, Laws of 1974, in subsection (3), increased the reciprocity registration fee from \$50 to \$100.

Chapter 350, Laws of 1974, deleted "to examine applicants for registration as pharmacists and interns" from the first sentence in subsection (1); inserted "The department" before "shall give reasonable notice" in the second sentence of subsection (1); substituted "department" for "secretary" in the third sentence of subsection (1); inserted "authorize the department to" before "grant registration" in the first sentence of subsection (5); substituted "department" for "state board of pharmacy" in the second sentence of subsection (5); deleted a final paragraph relating to pharmacists and interns holding certificates on the effective date of the original act; and made minor changes in phraseology, punctuation and style.

**66-1507. (3177) Annual renewal of registration fees.** A person licensed and registered by the department shall annually pay to the department before June 30, a renewal of registration fee of fifteen dollars (\$15). A default in the payment of a renewal fee for a period of thirty (30) days after the date it is due increases the renewal fee to thirty dollars (\$30). It is unlawful for a person who refuses or fails to pay the renewal fee to practice pharmacy in this state. The practice of pharmacy is a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest. A certificate and renewal expires at the time prescribed, not later than one (1) year from its date. A defaulter in a renewal fee may be reinstated within one (1) year of the default without examination on payment of the arrears.

**History:** En. Sec. 647, Pol. C. 1895; re-en. Sec. 1629, Rev. C. 1907; re-en. Sec. 8, Ch. 134, L. 1915; re-en. Sec. 3177, R. C. M. 1921; amd. Sec. 7, Ch. 175, L. 1939; amd. Sec. 1, Ch. 70, L. 1957; amd. Sec.

5, Ch. 241, L. 1971; amd. Sec. 153, Ch. 350, L. 1974.

#### Amendments

The 1971 amendment, inserted "on or

before the 30th day of June" in the first sentence; increased the renewal fee from \$5 to \$15; inserted the second sentence; and added the last sentence.

The 1974 amendment substituted "department" for "board" in the first sen-

tence; substituted "before June 30" in the first sentence for "on or before the 30th day of June"; and made minor changes in phraseology, punctuation and style.

**66-1508. Store license—certified pharmacy license—suspension or revocation.** (1) The department shall on application on forms prescribed by the board and on the payment of an annual fee of five dollars (\$5), license stores other than a pharmacy in which are sold ordinary household or medicinal drugs prepared in sealed packages or bottles by a manufacturer, qualified under the laws of the state in which the manufacturer resides. The name and address of the manufacturer shall appear conspicuously on each package sold by the licensee. It is unlawful for a store to sell, deliver, or give away household medicinal drugs, without first having secured a license and thereafter keeping it in force by proper renewal. This subsection does not prevent a vendor from selling a patent or proprietary medicine in the original package when plainly labeled, nor nonmedical articles usually sold by vendors.

(2) The board shall provide for the annual registration and licensing by the department of every pharmacy doing business in this state. On presentation of evidence satisfactory to the board and on application on a form prescribed by the board and on the payment of an annual fee of twenty dollars (\$20), the department shall issue any license to a pharmacy as a "CERTIFIED PHARMACY"; however, the license may be granted only to pharmacies operated by registered pharmacists or registered interns qualified under this act. Any default in the payment of such renewal fee for a period of thirty (30) days after the date the same is due shall increase the renewal fee to the sum of forty dollars (\$40). The license must be displayed in a conspicuous place in the pharmacy for which it is issued, and expires on June 30 following the date of issue. It is unlawful for a person to conduct a pharmacy, use the word pharmacy to identify his business, or use the word pharmacy in advertising unless a license has been issued and is in effect.

(3) The board may suspend, revoke, or refuse to renew a store or pharmacy license obtained by false representation or fraud; when the pharmacy for which the license is issued is kept open for the transaction of business without a pharmacist in charge; when the person to whom the license is granted has been convicted of a violation of this act, a felony, or a violation of the Federal Food, Drug and Cosmetic Act of June 25, 1938, (52 Stats. 1040 through 1059) if a natural person, whose pharmacist or intern license has been revoked; or when the store or pharmacy is conducted in violation of this act. Before a license can be revoked the holder is entitled to a hearing by the board.

**History:** En. Sec. 8, Ch. 175, L. 1939; amd. Sec. 1, Ch. 76, L. 1959; amd. Sec. 1, Ch. 9, L. 1967; amd. Sec. 1, Ch. 80, L. 1969; amd. Sec. 6, Ch. 241, L. 1971; amd. Sec. 1, Ch. 308, L. 1974; amd. Sec. 154, Ch. 350, L. 1974.

**Compiler's Notes**

This section was amended twice in 1974, once by Ch. 308 and once by Ch. 350. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to



conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

The 1971 amendment substituted "intern" for "assistant pharmacist" in subsections (2) and (3); and made a minor change in style.

Chapter 308, Laws of 1974, inserted the third sentence in subsection (2) relating to a late renewal fee.

Chapter 350, Laws of 1974, substituted "department" for "state board of pharmacy" in the first sentence of subsection (1) and for "board" in the second sentence of subsection (2); substituted "board" for "state board of pharmacy" and inserted "by the department" in the first sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

### 66-1509. Repealed.

#### Repeal

Section 66-1509 (Sec. 9, Ch. 175, L. 1939; Sec. 7, Ch. 241, L. 1971), relating to judi-

cial review of acts of the board, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-1511. (3185.1) Poison register to be kept by pharmacists may be required by board.** The board may by a rule require registered pharmacists to keep a poison register which may require a record of poisons sold or disposed of, the signature of the purchaser, and other information required by the board. The board may provide by rule what are poisons.

History: En. Sec. 1, Ch. 11, L. 1935; amd. Sec. 155, Ch. 350, L. 1974.

for "Montana state board of pharmacy" in the first sentence; and made minor changes in phraseology and style.

#### Amendments

The 1974 amendment substituted "board"

**66-1512. (3185.2) Revocation of license for failure to keep record or falsifying.** If a pharmacist sells or disposes of poison without keeping a record of it, keeps a false record of it, permits the sale or disposal of it without keeping a record, or otherwise violates rules made by the board the board may revoke the license of the pharmacist.

History: En. Sec. 2, Ch. 11, L. 1935; amd. Sec. 156, Ch. 350, L. 1974.

for "Montana state board of pharmacy"; and made minor changes in phraseology, punctuation and style.

#### Amendments

The 1974 amendment substituted "board"

**66-1521. (3202.10) Attorney general to be attorney for board—prosecutions—duties of county attorneys.** The attorney general is the attorney for the board. The department shall, under rules adopted by the board, assist the board and the attorney general in the administration and enforcement of this act. The county attorney of a county in which an offense under this act is committed shall prosecute the offender. The board, the department, or the county attorney may examine the books of a manufacturer, druggist, storekeeper, wholesale dealer, pharmacist, intern, or pharmacy in this state for the purpose of acquiring information to aid in prosecutions under this act.

History: En. Sec. 4, Ch. 104, L. 1931; amd. Sec. 10, Ch. 175, L. 1939; amd. Sec. 8, Ch. 241, L. 1971; amd. Sec. 157, Ch. 350, L. 1974.

tern" for "assistant pharmacist" in the last sentence.

The 1974 amendment substituted "board" in the first sentence for "Montana state board of pharmacy"; deleted "but said board may in its discretion employ other counsel" from the first sentence; substi-

#### Amendments

The 1971 amendment substituted "in-

tuted "department" for "secretary of the board" and "secretary" in the second and fourth sentences; and made minor changes in phraseology, punctuation and style.

**66-1521.1. Qualifications of employee hired by department.** A person hired by the department to enter and inspect an establishment under this chapter; to examine the books of a manufacturer, druggist, storekeeper, wholesaler, pharmacist, or intern; to assist in a prosecution under this chapter; and to assist the board in supervising internships, reciprocity agreements, professional correspondence, and examinations shall be:

- (1) A citizen of the United States and a resident of this state; and
- (2) A pharmacist registered under this chapter with five (5) years of practical experience.

History: En. 66-1521.1 by Sec. 158, Ch. 350, L. 1974.

**66-1527. (3202.12) Disposition of fees and fines.** Fines paid under this act and fees collected by the department for registration and licenses issued under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

History: En. Sec. 6, Ch. 104, L. 1931; amd. Sec. 16, Ch. 175, L. 1939; amd. Sec. 134, Ch. 147, L. 1963; amd. Sec. 159, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "by the department" for "by or under the authority of the state board of pharmacy"; added "subject to section 82A-1603(6)"; and made minor changes in phraseology.

## CHAPTER 16—PAWNBROKERS AND JUNK DEALERS—REGULATIONS

### Section

#### 66-1607. Penalties.

**66-1607. (4192) Penalties.** The penalties for a violation of any of the provisions of this chapter shall be a misdemeanor.

History: En. in substance as one of Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3316, Pol. C. 1895; re-en. Sec. 2111, Rev. C. 1907; re-en. Sec. 4192, R. C. M. 1921; amd. Sec. 21, Ch. 513, L. 1973.

#### Amendments

The 1973 amendment substituted "shall be a misdemeanor" for "are provided for in sections 94-3701 to 94-3704" at the end of the section.

## CHAPTER 18—PUBLIC ACCOUNTANTS—REGULATION

### Section

- 66-1807.1. Definitions.
- 66-1813. [Transferred.]
- 66-1815. Powers and duties of department and board.
- 66-1816. Disposition of funds.
- 66-1817. Rule-making powers of the board.
- 66-1818. Examinations.
- 66-1819. Certificates of certified public accountants.
- 66-1820. License of public accountants.
- 66-1821. Further requirements for licensure of public accountants.
- 66-1825. Applicability of education and experience requirements.
- 66-1829. Partnership composed of certified public accountants—registration thereof.
- 66-1829.1. Corporations composed of certified public accountants—registration thereof.
- 66-1830. Temporary certificate and temporary license.
- 66-1831. Partnerships composed of public accountants—registration thereof.
- 66-1831.1. Corporations composed of public accountants—registration thereof.

- 66-1832. Registration of offices.
- 66-1833. Annual licenses to practice.
- 66-1835. Revocation or suspension of partnership or corporation registration.
- 66-1836. Hearings before board.
- 66-1837. Reinstatement.
- 66-1838. Acts declared unlawful.

**66-1807.1. Definitions.** Unless the context requires otherwise, in this act:

(1) "Board" means the board of public accountants, provided for in section 82A-1602.2; and

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

**History:** En. 66-1807.1 by Sec. 160, Ch. 350, L. 1974.

### 66-1813. [Transferred.]

#### Compiler's Notes

Section 161, Ch. 350, Laws of 1974 renumbered this section as sec. 82A-1602.2.

### 66-1814. Repealed.

#### Repeal

Section 66-1814 (Sec. 2, Ch. 118, L. 1969), relating to qualifications of members of

the state board of public accountancy, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-1815. Powers and duties of department and board.** (1) The board shall elect annually a chairman, secretary, and treasurer from its members. (2) The board may adopt rules for the conduct of its affairs and the administration of this act. (3) A quorum for the transaction of business consists of three (3) members of the board. (4) The board shall have a seal which shall be judicially noticed. (5) The department shall keep records of the board's proceeding. In a proceeding in court, civil or criminal, arising out of or founded on this act, copies of these records certified as correct under the seal of the board are admissible in evidence as tending to prove the content of these records. (6) Each member of the board shall receive as compensation twenty dollars (\$20) for each day actually engaged in the duties of his office, and, in addition, shall be reimbursed for his actual and necessary expenses incurred in the discharge of his official duties.

**History:** En. Sec. 3, Ch. 118, L. 1969; amd. Sec. 162, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment deleted from the first sentence "and all or any two (2) of such officers may sign and approve claims

filed against the board of accountancy for payment of all expenses incurred under this act"; substituted "department" for "board" in subsection (5); deleted a sentence authorizing the board to employ necessary personnel; and made minor changes in phraseology, punctuation and style.

**66-1816. Disposition of funds.** Fees and other moneys collected by the department under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

**History:** En. Sec. 4, Ch. 118, L. 1969; amd. Sec. 163, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "board"; substituted "board"



for "state board of public accountancy"; and made minor changes in phraseology, added "subject to section 82A-1603(6)"; punctuation and style.

**66-1817. Rule-making powers of the board.** The board may make rules of professional conduct appropriate to establish and maintain a high standard of integrity, dignity, and competency in the profession of public accountancy. At least sixty (60) days prior to the adoption of a rule or amendment, the department shall mail copies of the proposed rule or amendment to each holder of a license issued under section 66-1833, with a notice advising him of the proposed effective date of the rule or amendment and requesting that he submit his comments on it at least fifteen (15) days prior to the effective date. These comments are advisory only. The department's certificate of mailing to licensed accountants is conclusive proof thereof.

**History:** En. Sec. 5, Ch. 118, L. 1969; amd. Sec. 164, Ch. 350, L. 1974.

partment" for "board" in the second sentence; substituted "department's" for "secretary's" in the last sentence; and made minor changes in phraseology, punctuation and style.

#### Amendments

The 1974 amendment substituted "de-

**66-1818. Examinations.** Except as provided in section 82A-1603(4), the department shall hold and grade a written examination in accounting, auditing, and related subjects as the board determines appropriate. The grade determination of the department is final in each case. The department shall use the examination and grading services of the American Institute of Certified Accountants. The examination shall be held at least annually and at such other times as applications warrant. The board may determine the time and place of examination and may adopt rules necessary for the orderly conduct of the examination.

**History:** En. Sec. 6, Ch. 118, L. 1969; amd. Sec. 165, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment inserted "Except as provided in section 82A-1603(4)" at the beginning of the section; substituted "de-

partment" for "members of the board" in the first sentence and for "examining committee" in the second and third sentences; substituted "board" for "examining committee" in the first and last sentences; and made minor changes in phraseology, punctuation and style.

**66-1819. Certificates of certified public accountants.** Certification as a certified public accountant is available to any person:

(1) Who is (a) a citizen of the United States or who has declared his intention of becoming a citizen, (b) is a resident of this state or has a place of business in this state or, as an employee, is regularly employed in this state, and (c) is of good moral character;

(2) Who has successfully passed the certified public accountants' examination; and

(3) Who meets the requirements of education and experience in sections 66-1823, 66-1824 and 66-1825.

**History:** En. Sec. 7, Ch. 118, L. 1969; amd. Sec. 5, Ch. 168, L. 1971; amd. Sec. 166, Ch. 350, L. 1974.

#### Amendments

The 1971 amendment deleted the re-

quirement that the applicant have attained the age of twenty-one years.

The 1974 amendment redesignated the subdivisions and clauses; deleted "66-1822" from subdivision (3) before "66-1823"; and made minor changes in phraseology.

**66-1820. License of public accountants.** Licensure as a public accountant is available to any person:

(1) Who is (a) a citizen of the United States or who has declared his intention of becoming a citizen, (b) is a resident of this state or has a place of business in this state or, as an employee, is regularly employed in this state, and (c) is of good moral character;

(2) Who meets the requirements of education and experience set forth in sections 66-1823, 66-1824 and 66-1825; and

(3) Who complies with the qualifications and requirements in any one of the subdivisions of section 66-1821.

History: En. Sec. 8, Ch. 118, L. 1969; amd. Sec. 167, Ch. 350, L. 1974.

#### Amendments

The 1971 amendment deleted the re-

quirement that the applicant have attained the age of twenty-one years.

The 1974 amendment redesignated the subdivisions and clauses; deleted "66-1822" from subdivision (2) before "16-1823"; and made minor changes in phraseology.

#### **66-1821. Further requirements for licensure of public accountants.**

(1) Persons serving in the armed forces of the United States on July 1, 1969, who immediately prior to entering this service held themselves out to the public as public accountants and who were engaged as principals, in this state, in the practice of public accounting as their principal occupation prior to service in the armed forces, may register with the department within six (6) months after the date of their separation from active service, and on registration and payment of the license fee, be issued a license by the department as a licensed public accountant. A principal is either the owner of or a partner in an existing accounting practice on July 1, 1969.

(2) A person who does not qualify under subdivision (1) must fulfill the following additional requirements, as a prerequisite to the issuance of a license as a licensed public accountant:

(a) He must pass the written examination in accounting practice, and

(b) He must also pass the written examination in either accounting theory or auditing, or instead of the examination in auditing or theory, he must be the holder of a United States Treasury card which is in good standing at the time of his sitting for the examination in accounting practice. The examinations referred to in this subdivision shall be those prescribed for subjects under section 66-1818, and shall be conducted and graded by the same standards as those given to candidates for certified public accountant.

History: En. Sec. 9, Ch. 118, L. 1969; amd. Sec. 168, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment redesignated the subsections and subdivisions; deleted a former first subsection relating to registration of public accountants engaged as principals on July 1, 1969 (see parent volume);

substituted "July 1, 1969" near the beginning of subsection (1) for "the effective date of this act"; deleted "(as distinguished from employees)" in subsection (1) after "principals"; substituted "department" in two places in subsection (1) for "board"; added the last sentence of subsection (1); and made minor changes in punctuation and phraseology.

#### **66-1822. Repealed.**

##### Repeal

Section 66-1822 (Sec. 10, Ch. 118, L. 1969), relating to education and experience

requirements for years ending December 31, 1971 and before, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-1825. Applicability of education and experience requirements.** (1) None of the foregoing education and experience requirements apply to a candidate for certified public accountant who holds a current license as a public accountant, or who, on July 1, 1969, was employed as a staff accountant in this state by a practicing public accountant, and is so employed at the time of his examination.

(2) A candidate who is otherwise eligible may take the examination provided for in section 66-1818 before meeting the age and experience requirements but the successful completion of this examination does not qualify him for a certificate or a license as a public accountant until he meets these requirements.

(3) The board may by rule provide for granting credit to a candidate for his satisfactory completion of a written examination in any one or more of the subjects of examination given by the licensing authority in another state, if when he took the examination he was not a resident of this state. These rules shall include requirements the board determines appropriate in order that an examination approved as a basis for credit is, in the judgment of the board, at least as thorough as that included in the most recent examination given in this state at the time of granting the credit.

(4) The experience requirements need not be continuous or for one (1) employer.

(5) Except as provided in subdivision (1) of this section, the applicable education and experience requirements are those in effect on the date of the examination by which the candidate successfully completes his examination; but the board may provide by rule for exceptions to the general rule in order to prevent what it determines to be undue hardship to candidates resulting from changes in the education and experience requirements.

History: En. Sec. 13, Ch. 118, L. 1969;  
amd. Sec. 169, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment redesignated the

subsections; substituted "July 1, 1969" in subsection (1) for "the effective date of this act"; substituted "board" throughout subsection (3) for "examining committee"; and made minor changes in phraseology.

**66-1829. Partnership composed of certified public accountants—registration thereof.** (1) A partnership engaged in this state in the practice of public accounting may register with the department as a partnership of certified public accountants provided it meets the following requirements:

(a) At least one (1) general partner must be a certified public accountant of this state in good standing, and must hold a license issued under section 66-1833 which is in effect;

(b) Each partner personally engaged in this state in the practice of public accounting must be a certified public accountant of this state in good standing and must hold a license issued under section 66-1833 which is in effect;

(c) Each partner must be a certified public accountant of some state in good standing; and



(d) Each staff member who is employed in this state, and who is certified under section 66-1819 or registered under section 66-1820, must hold a license issued under section 66-1833 which is in effect.

(2) Application for registration must be made on the affidavit of a general partner of the partnership who is a certified public accountant of this state in good standing. The board shall in each case determine whether the applicant is eligible for registration. A partnership which is registered may use the words "certified public accountants" or the abbreviation "CPA's" in connection with its partnership name. Notification shall be given the department within one (1) month after the admission to or withdrawal of a partner from a partnership so registered.

**History:** En. Sec. 17, Ch. 118, L. 1969; section designations and redesignated the subdivisions; substituted "department" amd. Sec. 170, Ch. 350, L. 1974. throughout the section for "board"; and made minor changes in punctuation and phraseology.

**Amendments.**

The 1974 amendment inserted the sub-

**66-1829.1. Corporations composed of certified public accountants — registration thereof.** A professional service corporation organized for the practice of public accounting may register with the board as a corporation of certified public accountants provided it meets the following requirements:

(1) The sole purpose and business of the corporation must be to furnish to the public services not inconsistent with the public accounting act or the regulations of the board; provided, that the corporation may invest its funds in a manner not incompatible with the practice of public accounting.

(2) At least one (1) shareholder thereof must be a certified public accountant of this state in good standing, and must hold a license issued under section 66-1833 which is in effect.

(3) Each shareholder of the corporation must be a certified public accountant of some state in good standing and must be principally employed by the corporation or actively engaged in its business. No other person shall have any interest in the stock of the corporation. The principal of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be a certified public accountant of some state in good standing.

(4) Each shareholder of the corporation personally engaged within this state in the practice of public accounting as a member thereof must be a certified public accountant of this state in good standing and must hold a license issued under section 66-1833 which is in effect.

(5) Each staff member who is employed within this state, and who is certified under section 66-1819 or registered under section 66-1820, must also hold a license issued under section 66-1833 which is in effect.

(6) In order to facilitate compliance with the provisions of this section relating to the ownership of stock, there must be a written agreement binding the corporation or the qualified shareholders to purchase any shares offered for sale by, or not under the ownership or effective control of, a qualified shareholder and binding any shareholder not a qualified share-

holder to sell such shares to the corporation or the qualified shareholders. The agreement must be noticed on each certificate of corporate stock.

Application for such registration must be made upon the affidavit of a shareholder who holds a permit to practice in this state as a certified public accountant. The board shall in such case determine whether the applicant is eligible for registration. A corporation which is so registered may use the words "certified public accountant" or the abbreviation "CPA's" in connection with its corporation name. Notification shall be given the board within one (1) month after the admission or withdrawal of a shareholder of a corporation so registered.

**History:** En. 66-1829.1 by Sec. 1, Ch. 207, L. 1974.

**Title of Act**

An act permitting incorporation of firms

engaged in the practice of public accounting; regulating such practice; and providing for the registration of such corporations; and amending sections 66-1832, 66-1835, 66-1838, R. C. M. 1947.

**66-1830. Temporary certificate and temporary license.** (1) If an applicant for a certificate as a certified public accountant meets the requirements for the certificate, other than the residence requirement, the board may, in its discretion, authorize the department to, issue to him a temporary certificate as a certified public accountant which is effective only until the board notifies him that his application has been either granted or rejected. In no event may a temporary certificate be in effect for more than twelve (12) months.

(2) If an applicant for licensure as a public accountant meets the requirements for licensing, other than the residence requirement, the board may, in its discretion, authorize the department to issue to him a temporary license, as a licensed public accountant, which is effective only until the board notifies him that his application has been either granted or rejected. In no event may a temporary license be in effect for more than twelve (12) months.

**History:** En. Sec. 18, Ch. 118, L. 1969; amd. Sec. 171, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment inserted "authorize

the department" before "issue" in the first sentences of subsections (1) and (2); and made minor changes in phraseology, punctuation and style.

**66-1831. Partnerships composed of public accountants — registration thereof.** (1) A partnership engaged in this state in the practice of public accounting may register with the department as a partnership of public accountants provided it meets the following requirements:

(a) At least one (1) general partner must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a license issued under section 66-1833 which is in effect;

(b) Each partner personally engaged in this state in the practice of public accounting must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a license issued under section 66-1833 which is in effect;

(c) Each local manager in charge of an office or a firm in this state must be a certified public accountant or a licensed public accountant of

this state in good standing and a holder of a license issued under section 66-1833 which is in effect; and

(d) Each staff member employed within this state, and who is certified under section 66-1819 or registered under section 66-1820, must hold a license issued under section 66-1833 which is in effect.

(2) Application for registration must be made on the affidavit of a general partner of the partnership who holds a license to practice in this state as a certified public accountant or as a licensed public accountant. The board shall in each case determine whether the applicant is eligible for registration. A partnership which is registered may use the words "public accountants" in connection with its partnership name. Notification shall be given the department within one (1) month after the admission to or withdrawal of a partner from a partnership so registered.

History: En. Sec. 19, Ch. 118, L. 1969; partment" for "board" in the first and last sentences; and made minor changes in phraseology, punctuation and style.

#### Amendments

The 1974 amendment substituted "de-

**66-1831.1. Corporations composed of public accountants—registration thereof.** A professional service corporation organized for the practice of public accounting may register with the board as a corporation of public accountants provided it meets the following requirements:

(1) The sole purpose and business of the corporation must be to furnish to the public services not inconsistent with the public accounting act or the regulations of the board; provided, that the corporation may invest its funds in a manner not incompatible with the practice of public accounting.

(2) At least one (1) shareholder thereof must be a certified public accountant or public accountant of this state in good standing, and must hold a license issued under section 66-1833 which is in effect.

(3) Each shareholder of the corporation must be a certified public accountant or public accountant of some state in good standing and must be principally employed by the corporation or actively engaged in its business. No other person shall have any interest in the stock of the corporation. The principal of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be a certified public accountant or public accountant of some state in good standing.

(4) Each shareholder of the corporation personally engaged within this state in practice of public accounting as a member thereof must be a certified public accountant or public accountant of this state in good standing and must hold a license issued under section 66-1833 which is in effect.

(5) Each staff member who is employed within this state, and who is certified under section 66-1819 or registered under section 66-1820, must also hold a license issued under section 66-1833 which is in effect.

(6) In order to facilitate compliance with the provisions of this section relating to the ownership of stock, there must be a written agreement binding the corporation or the qualified shareholders to purchase any shares



offered for sale by, or not under the ownership or effective control, of a qualified shareholder and binding any shareholder not a qualified shareholder to sell such shares to the corporation or the qualified shareholders. The agreement must be noticed on each certificate of corporate stock.

Application for such registration must be made upon the affidavit of a shareholder who holds a permit to practice in this state as a certified public accountant or public accountant. The board shall in such case determine whether the applicant is eligible for registration. A corporation which is so registered may use the words "public accountant" or the abbreviation "PA's" in connection with its corporation name. Notification shall be given the board within one (1) month after the admission or withdrawal of a shareholder of a corporation so registered.

History: En. 66-1831.1 by Sec. 2, Ch. 207, L. 1974.

**66-1832. Registration of offices.** Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant or a partnership or corporation of certified public accountants or by a licensed public accountant or a partnership or corporation of licensed public accountants or by one registered under section 66-1828 shall be registered annually under this act with the department. A fee may not be charged for this registration. The principals of sole proprietorships and staff employees who are employed in this state and who are holders of certificates as certified public accountants must also hold a license issued under section 66-1833 which is in effect. Partnerships and corporations must be registered under section 66-1829 or section 66-1831, whichever is applicable, and foreign accountants under the provisions of section 66-1828.

History: En. Sec. 20, Ch. 118, L. 1969; amd. Sec. 3, Ch. 207, L. 1974; amd. Sec. 173, Ch. 350, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 207 and once by Ch. 350. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 207, Laws of 1974, inserted "or corporation" after "partnership" in two places in the first sentence; substituted "department" for "board" in the first sentence; inserted "and corporations" after "partnerships" in the last sentence; and made minor changes in phraseology and style.

Chapter 350, Laws of 1974, substituted "department" for "board" in the first sentence; and made minor changes in phraseology and style.

**66-1833. Annual licenses to practice.** Annual licenses to engage in the practice of public accounting in this state shall be issued by the department to holders of the certificate of certified public accountant issued under section 66-1819 and to persons licensed under section 66-1820, if all offices, if any, of the certificate holder or licensed public accountant are maintained and registered under section 66-1832. There is an annual license fee in an amount to be determined by the board, not to exceed twenty-five dollars (\$25) for a year or part thereof. Annual licenses expire on December 31 of each year and may be renewed annually for a period of one (1) year by certificate holders and licensed public accountants in good stand-

ing on payment of an annual renewal fee of not to exceed twenty-five dollars (\$25). Failure of a certificate holder or licensed public accountant to apply for the annual license to practice within three (3) years from the expiration date of the annual license to practice last obtained or renewed, or three (3) years from the date on which the certificate holder or licensee was granted his certificate or license, deprives him of the right to the annual license, unless the board, in its discretion, determines the failure to have been due to excusable neglect. A certificate holder or licensed public accountant who is retiring from active practice or other employment because of illness, age, marriage, or other justifiable cause, in the opinion of the board, may be placed on an inactive list, without prejudicing his right to be issued an annual license at a future date. A request for inactive status must be sent to the department within the three-year period as outlined in this section.

**History:** En. Sec. 21, Ch. 118, L. 1969; before "license" and "licenses" throughout the section; substituted "department" for "board" in the first and last sentences; amd. Sec. 174, Ch. 350, L. 1974. and made minor changes in phraseology, punctuation and style.

#### **Amendments**

The 1974 amendment inserted "annual"

**66-1835. Revocation or suspension of partnership or corporation registration.** After notice and hearing as provided in section 66-1836, the board shall revoke the registration of a partnership or corporation if at any time it does not have all the qualifications prescribed by the section of this act under which it qualified for registration.

**History:** En. Sec. 23, Ch. 118, L. 1969; amd. Sec. 4, Ch. 207, L. 1974.

#### **Amendments**

The 1974 amendment inserted "or corporation" after "partnership."

**66-1836. Hearings before board.** (1) The board may initiate proceedings under this act either on its own motion or on the complaint of a person. Hearings and rule-making proceedings shall be governed in all respects by the Montana Administrative Procedure Act.

**History:** En. Sec. 24, Ch. 118, L. 1969; amd. Sec. 175, Ch. 350, L. 1974.

sentence for nine paragraphs relating to procedure for hearings before the board (for prior law, see parent volume); and made minor changes in style.

#### **Amendments**

The 1974 amendment substituted the last

**66-1837. Reinstatement.** On application in writing and after hearing pursuant to notice, the board may authorize the department to issue a new certificate to a certified public accountant whose certificate has been revoked, or may permit the relicensing of anyone whose license has been revoked, or may reissue or modify the suspension of a license to practice public accounting which has been revoked or suspended.

**History:** En. Sec. 25, Ch. 118, L. 1969; amd. Sec. 176, Ch. 350, L. 1974.

the department to" before "issue a new certificate"; and made minor changes in phraseology.

#### **Amendments**

The 1974 amendment inserted "authorize

**66-1838. Acts declared unlawful.** (a) No person shall assume or use the title or designation "certified public accountant" or the abbreviation

"CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant unless such person has received a certificate as a certified public accountant under section 66-1819, holds a license issued under section 66-1833, which is not revoked or suspended, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under section 66-1832; provided however, that a foreign accountant who has registered under the provisions of section 66-1828, and who holds a current license issued under section 66-1833, may use the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license or degree.

(b) No partnership or corporation shall assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that such partnership or corporation is composed of certified public accountants unless it is registered under section 66-1829, and all of its offices in this state for the practice of public accounting are maintained and registered as required under section 66-1832.

(c) \* \* \* [Same as parent volume.]

(d) No partnership or corporation shall assume or use the title or designation "licensed public accountants," "public accountant," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of public accountants, unless it is registered under section 66-1831 or under section 66-1829 and all of its offices in this state for the practice of public accounting are maintained and registered as required under section 66-1832.

(e) No person, corporation or partnership shall assume or use the title or designation "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," "registered accountant," or any other title or designation likely to be confused with "certified public accountant," "licensed public accountant," "public accountant," or any of the abbreviations "CA," "EA," "RA," or "LA," or similar abbreviations likely to be confused with "CPA"; provided, however, that anyone who holds a current license issued under section 66-1833 and all of whose offices in the state for the practice of public accounting are maintained and registered as required under section 66-1832 may hold himself out to the public as an "accountant" or "auditor," as provided in subparagraphs (a), (b), (c) and (d); and provided, further, that a foreign accountant registered under section 66-1828 who holds a current license issued under section 66-1833 and all of whose offices in this state for the practice of public accounting are maintained and registered as required under section 66-1832 may use the title under which he is generally known in this country, followed by the name of the country from which he received his certificate, license or degree.

(f) No person shall sign or affix his name or any trade or assumed name used by him in his profession or business, with any wording indicating that he is an accountant or auditor, or with any wording indicating that he has expert knowledge in accounting or auditing, to any accounting or



financial statement, or to any opinion on, report on, or certificate to any accounting or financial statement, unless he holds a current license issued under section 66-1833, and all of his offices in this state for the practice of public accounting are maintained and registered under section 66-1832; provided, however, that the provisions of this subsection shall not prohibit any officer, employee, partner or principal or any organization from affixing his signature to any statement or report in reference to the financial affairs of said organization with any wording designating the position, title or office which he holds in said organization, nor shall the provisions of this subsection prohibit any act of a public official or public employee in the performance of his duties as such.

(g) No person shall sign or affix a partnership or corporation name with any wording indicating that it is a partnership or corporation composed of accountants or auditors or persons having expert knowledge in accounting or auditing, to any accounting or financial statement, or to any report on or certificate to any accounting or financial statement, unless the partnership or corporation is registered under this act, and all of its offices in this state for the practice of public accounting are maintained and registered as required under section 66-1832.

(h) No person shall assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a partnership or corporation or in conjunction with the designation "and Company," or "and Co." or a similar designation if, in any such case, there is in fact no bona fide partnership or corporation registered under sections 66-1829 or 66-1831; provided that a sole proprietor or partnership lawfully using such title or designation in conjunction with such names or designation on the effective date of this act, may continue to do so if he or it otherwise complies with the provisions of this act; and provided, further, that it shall be lawful for a sole proprietor to continue the use of the deceased's name in connection with his business for a reasonable period of time after the death of a former partner.

History: En. Sec. 26, Ch. 118, L. 1969;  
amd. Sec. 5, Ch. 207, L. 1974.

#### Amendments

The 1974 amendment deleted former subsections (f) and (i) which prohibited cor-

porations from serving as accountants or auditors under the act; inserted "or corporation" throughout the section; and made minor changes in phraseology and punctuation.

### CHAPTER 19—REAL ESTATE LICENSE ACT

#### Section

- 66-1924. Title—license required.
- 66-1925. Definitions.
- 66-1927. Board—powers and duties—compensation.
- 66-1929. Licenses—applicants for licenses.
- 66-1930. Written examination—contents—time and place—exemptions.
- 66-1931. License—issuance—suspension—revocation.
- 66-1932. License—delivery—display—pocket card.
- 66-1933. Bond of brokers and salesmen.
- 66-1934. Fees—when due.
- 66-1935. Requirements for office—employment of salesmen—issuance and display of license.

- 66-1936. Transactions with nonresidents and with nonlicensed brokers or salesmen—consent to legal process.
- 66-1937. Grounds for refusal—suspension or revocation of license.
- 66-1938.1. Hearings—procedure.
- 66-1943. Real estate meetings and clinics open to all licensees.
- 66-1944. Attorney for board.
- 66-1945. Publication of directory.

**66-1924. Title—license required.** (1) This act may be cited as the “Real Estate License Act of 1963.”

(2) It is unlawful for a person to engage in or conduct, directly or indirectly, or to advertise or hold himself out as engaging in or conducting the business, or acting in the capacity of a real estate broker or a real estate salesman within this state without a license as a broker or salesman, or otherwise complying with this act.

(3) Corporations, partnerships, and associations may not be licensed under this act. A corporation or a partnership may act as a real estate broker if every corporate officer, and every partner, performing the functions of a “broker” as defined in section 66-1925(2), is licensed as a broker. All officers of a corporation or all members of a partnership, acting as a broker, are in violation of this act unless there is full compliance with this subsection.

**History:** En. Sec. 1, Ch. 250, L. 1963;  
amd. Sec. 1, Ch. 261, L. 1969; amd. Sec.  
177, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment added subsection (3); and made minor changes in phraseology, punctuation and style.

**66-1925. Definitions.** Unless the context requires otherwise, in this act:

(1) “Real estate” includes leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold or nonfreehold, and whether the real estate is situated in this state or elsewhere.

(2) “Broker” includes an individual who for another, or for a fee, commission, or other valuable consideration, or who with the intent or expectation of receiving the same, negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements thereon, or collects rents or attempts to collect rents, or advertises or holds himself out as engaged in any of the foregoing activities. The term “broker” also includes an individual employed by or on behalf of the owner or lessor of real estate, to conduct the sale, leasing, subleasing, or other disposition thereof at a salary or for a fee, commission, or any other consideration; it also includes an individual who engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which he undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose, or for referral of information concerning real estate to brokers, or both.

(3) “Salesman” includes an individual who, for a salary, commission, or compensation of any kind, is employed, either directly, indirectly, regu-

larly, or occasionally, by a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(4) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this act it means an individual.

(5) "Board" means the board of real estate, provided for in section 82A-1602.23.

(6) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

**History:** En. Sec. 2, Ch. 250, L. 1963; amd. Sec. 2, Ch. 261, L. 1969; amd. Sec. 178, Ch. 350, L. 1974.

#### **Amendments**

The 1974 amendment deleted a portion

of subsection (2) prohibiting licensure of corporations, partnerships and associations under the act; added the definitions of "Board" and "Department"; and made minor changes in phraseology, punctuation and style.

**66-1927. Board—powers and duties—compensation.** (1) The board shall from time to time adopt rules to carry out the provisions of this act.

(2) The department shall keep a record of proceedings, transactions, communications and official acts of the board, be custodian of the records of the board and shall cause to be performed other duties as the board on the written request of two (2) or more members of the board or at other times as the chairman in his discretion considers necessary. Neither the chairman nor an employee of the department, hired to provide services to the board, may be an officer or paid employee of any real estate association or group of real estate dealers or brokers.

(3) Each member of the board shall receive as compensation for each one-half day or portion thereof actually spent on his official duties the sum of seven dollars and fifty cents (\$7.50) and his actual and necessary expenses incurred in the performance of other duties provided for by the board.

(4) The board shall adopt a seal of a design as it shall prescribe. Copies of records and papers kept by the department, certified by the chairman and authenticated by the seal of the board, shall be received in evidence in courts with like effect as the original. Records of the board are open to public inspection under rules it prescribes.

**History:** En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974.

#### **Amendments**

The 1974 amendment deleted portions of the section relating to the creation and powers of the Montana state real estate commission; substituted "board" for "commission" throughout the section; substituted "department" for "chairman" at the beginning of subsection (2); substituted

"department" for "commission" in the second sentence of subsection (2) and inserted "hired to provide services to the board"; substituted "department" for "commission" in the second sentence of subsection (4); deleted a subsection relating to collection and deposit of fees, and expenditures of the commission; and made minor changes in phraseology, punctuation and style.

### **66-1928. Repealed.**

#### **Repeal**

Section 66-1928 (Sec. 5, Ch. 250, L. 1963), relating to surplus funds of the

commission in the earmarked revenue fund, was repealed by Sec. 1, Ch. 112, Laws 1973.



**66-1929. Licenses — applicants for licenses.** (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesman in a manner as to safeguard the interests of the public.

(2) An applicant for a broker's license shall be a citizen of the United States; shall be at least eighteen (18) years of age; shall have graduated from an accredited high school or completed an equivalent education as determined by the board; shall have been actively engaged as a licensed real estate salesman for a period of two (2) years or shall have had experience or special education equivalent to that which a licensed real estate salesman ordinarily would receive during this two (2) year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesman because of conditions existing in the area where he resides, the board may waive this experience requirement; and shall file an application for license with the department. The board shall require information it considers necessary from an applicant to determine his honesty, trustworthiness, and competency.

(3) An applicant for a salesman's license shall be at least eighteen (18) years of age; shall have received credit for completion of two (2) years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board; and must file an application for license with the department. His application shall be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect. The department shall issue to each licensed broker and to each licensed salesman a license and a pocket card in a form and size as the board prescribes.

**History:** En. Sec. 6, Ch. 250, L. 1963; amd. Sec. 3, Ch. 261, L. 1969; amd. Sec. 10, Ch. 423, L. 1971; amd. Sec. 180, Ch. 350, L. 1974.

#### **Amendments**

The 1971 amendment reduced the age specified in each of subsections (2) and (3) from 21 to 18 years.

The 1974 amendment substituted "board" for "commission" throughout the section; substituted "department" for "commission" at the end of the first sentence in subsection (2), at the end of the first sentence in subsection (3), and at the beginning of the last sentence in subsection (3); and made minor changes in phraseology, punctuation and style.

**66-1930. Written examination — contents — time and place — exemptions.** In addition to proof of honesty, trustworthiness, and good reputation, an applicant whose application is then pending shall satisfactorily pass a written examination prepared by or under the supervision of the board. The examination shall be given at least once each six (6) months and at places within the state the board prescribes. The examination for a salesman's license shall include business ethics, writing, appraisal, composition, arithmetic, elementary principles of land economics and appraisal, a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency, brokerage, and this act. The examination for a broker's license shall be of a more exacting nature and scope and more

stringent than the examination for a salesman's license. An applicant who has failed twice in succession to pass the same class of examination is ineligible for a further examination for six (6) months.

History: En. Sec. 7, Ch. 250, L. 1963; proviso permitting licensed brokers and  
amd. Sec. 181, Ch. 350, L. 1974. salesmen in business at the effective date of the original act to obtain a new license without examination; and made minor changes in phraseology, punctuation and style.

#### Amendments

The 1974 amendment substituted "board" for "commission" in two places; deleted a

**66-1931. License—issuance—suspension—revocation.** The board may regulate the issuance of licenses and revoke or suspend licenses issued under this act.

History: En. Sec. 8, Ch. 250, L. 1963; amd. Sec. 182, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "board" for "commission" and made a minor change in phraseology.

**66-1932. License—delivery—display—pocket card.** The board shall prescribe the form of license. A license shall bear the seal of the board. The license of a real estate salesman shall be delivered or mailed to the real estate broker by whom the real estate salesman is employed, and shall be kept in the custody and control of the broker. A broker shall display his own license conspicuously in his place of business. The department shall annually prepare and deliver a pocket card certifying that the person whose name appears is a registered real estate broker or a registered real estate salesman, stating the period for which fees have been paid and, on real estate salesman's cards only, the name and address of the broker employing the real estate salesman.

History: En. Sec. 9, Ch. 250, L. 1963; amd. Sec. 183, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "board"

for "commission" in the first and second sentences; substituted "department" for "commission" in the last sentence; and made minor changes in phraseology.

**66-1933. Bond of brokers and salesmen.** No license may be issued or renewed until the applicant for a broker's license or salesman's license has filed a bond with the department in the sum of ten thousand dollars (\$10,000), executed by a surety company authorized to do business in this state in a form approved by the board and conditioned that the applicant, if and when licensed, shall conduct his business and himself in accordance with this act, and shall pay, to the extent of ten thousand dollars (\$10,000), judgments recovered against him for loss or damage to a person arising in the course of the applicant's practice as a real estate broker or salesman. Bonds given by licensees under this act, after approval, shall be filed and held in the office of the department. If for a reason the bond of any broker or salesman is canceled or voided, the license of the broker or salesman is automatically suspended until the broker or salesman is again fully bonded and the bond has been approved by the board. If the suspension is not terminated by rebonding and approval within thirty (30) days from the date of suspension, the license of the broker or salesman is automatically revoked.

**History:** En. Sec. 10, Ch. 250, L. 1963; amd. Sec. 4, Ch. 261, L. 1969; amd. Sec. 184, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "approved by the board" in the first and third

sentences for "approved by the commission"; substituted "department" for "commission" in the first sentence after "filed bond with the"; substituted "department" for "commission" in the second sentence; and made minor changes in phraseology and punctuation.

**66-1934. Fees—when due.** (1) The following fees shall be charged by the department and paid into the earmarked revenue fund for the use of the board, subject to section 82A-1603(6):

(a) For each examination, a fee not to exceed fifty dollars (\$50).

(b) For each original resident broker's license issued, a fee not to exceed fifty dollars (\$50).

(c) For each annual renewal of a resident broker's license, a fee not to exceed fifty dollars (\$50).

(d) For each original nonresident broker's license issued, a fee not to exceed fifty dollars (\$50).

(e) For each annual renewal of a nonresident broker's license, a fee not to exceed fifty dollars (\$50).

(f) For each original salesman's license issued, a fee not to exceed twenty-five dollars (\$25).

(g) For each annual renewal of a salesman's license, a fee not to exceed twenty-five dollars (\$25).

(h) For each additional office or place of business, an annual fee not to exceed twenty-five dollars (\$25).

(i) For each change of place of business or change of employer or contractual associate, a fee not to exceed twenty-five dollars (\$25).

(j) For each duplicate license, where the original license is lost or destroyed and affidavit is made, a fee not to exceed ten dollars (\$10).

(k) For each duplicate pocket card, where the original pocket card is lost or destroyed and affidavit is made, a fee not to exceed ten dollars (\$10).

(2) The board shall adopt a schedule of fees within the limits set by this section. However, a fee once set for one of the items for which a fee is charged cannot be increased or decreased until at least one (1) year has passed since the fee for that particular item was last increased or decreased.

(3) Annual fees are due and payable for the ensuing year during the month of December of each year. Failure to remit annual fees before January 1 automatically cancels the license, but otherwise the license remains in effect continuously from the date of issuance, unless suspended or revoked by the board for just cause.

**History:** En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "commission" in the first

sentence of subsection (1) and inserted "for use of the board, subject to section 82A-1603(6)"; substituted "board" for "commission" in subsections (2) and (3); and made minor changes in phraseology, punctuation and style.



**66-1935. Requirements for office—employment of salesmen—issuance and display of license.** (1) A resident licensed broker shall maintain a fixed office in this state. The original license of the broker and the original license of each salesman in the employ of or under contract with the broker shall be prominently displayed in the office. The address of the office and a branch office shall be designated on the broker's license. In case of removal from the designated address, the licensee shall notify the department before removal or within ten (10) days thereafter, designating the new location of this office, and paying the required fee, whereupon a license for the new location for the unexpired period shall be issued.

(2) A salesman may not be employed by, or under contract to, more than one (1) licensed broker nor may he perform services for a broker other than the one designated on the license issued to the salesman. When a licensed salesman desires to change his employment or contractual relationship from one licensed broker to another, he shall notify the department promptly in writing of these facts, pay the required fee, and return his license and pocket card, and a new license and pocket card shall be issued. No salesman shall directly or indirectly work for or with a broker until he has been issued a license to work for or with that broker. On termination of a salesman's employment or contractual relationship he shall surrender his license and pocket card to his broker, who shall return them to the department for cancellation.

(3) Only one (1) license shall be issued to a salesman to be in effect at one time.

**History:** En. Sec. 12, Ch. 250, L. 1963; am. Sec. 186, Ch. 350, L. 1974.

partment" for "commission" throughout the section; and made minor changes in phraseology, punctuation and style.

**Amendments**

The 1974 amendment substituted "de-

**66-1936. Transactions with nonresidents and with nonlicensed brokers or salesmen—consent to legal process.** (1) It is unlawful for a licensed broker to employ or compensate directly or indirectly a person for performing the acts regulated by this act who is not a licensed broker or licensed salesman. However, a licensed broker may pay a commission to a licensed broker of another state if the nonresident broker has not conducted and does not conduct in this state a service for which a fee, compensation, or commission is paid. This subsection does not limit the next subsection.

(2) A nonresident of this state, who is actively engaged in the real estate business, who maintains a place of business in another state, and who has been licensed in the other state to conduct this business in that state, may obtain a license as a broker in this state by complying with this act. However, this section applies only to those brokers of other states which offer the same privileges to the licensed brokers of this state. The nonresident licensee need not maintain a place of business in this state. The board may authorize the department to license a nonresident broker without examination, if he files with the department an authorized or certified copy of the license issued to the nonresident for conducting this business in another state, and by paying to the department the same

license fee as is required for obtaining a broker's license in this state. The board may, in its discretion, refuse to authorize the department to issue a broker's license to an applicant who is not a resident of this state.

(3) A nonresident broker shall file an irrevocable written consent that legal actions arising out of a commenced or completed transaction may be commenced against the nonresident broker in a county of this state which may be appropriate and designated by section 93-2904; and the consent shall provide that service of summons in this action may be served on the department, for and on behalf of the nonresident broker, and this service is sufficient to give the court jurisdiction over the nonresident broker and his salesman or agent conducting a transaction in a county. The consent shall be acknowledged, and if made by a corporation, shall be authenticated by its seal.

**History:** En. Sec. 13, Ch. 250, L. 1963; amd. Sec. 187, Ch. 350, L. 1974.

partment" for "commission" twice in the fourth sentence of subsection (2); substituted "department" for "chairman of the commission" in the first sentence of subsection (3); deleted a portion of subsection (3) relating to service of process; and made minor changes in phraseology, punctuation and style.

#### Amendments

The 1974 amendment substituted references to the board authorizing the department to issue licenses for references to the commission issuing licenses in two places in subsection (2); substituted "de-

**66-1937. Grounds for refusal—suspension or revocation of license.** The board may, on its own motion, and shall, on the sworn complaint in writing of a person, investigate the actions of a real estate broker or a real estate salesman, subject to sections 82A-1603 and 82A-1604, and may revoke or suspend a license issued under this act when the broker or salesman has been found guilty by a majority of the board of any of the following practices:

(1) Intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted;

(2) Making any false promises of a character likely to influence, persuade, or induce;

(3) Pursuing a continued and flagrant course of misrepresentation, or making false promises through agents or salesmen, or any medium of advertising, or otherwise;

(4) Use of the term "realtor" by a person not authorized to do so, or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(5) Failing to account for or to remit money coming into his possession belonging to others;

(6) Accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(7) Acting in a dual capacity of broker and undisclosed principal in a transaction;

(8) Guaranteeing, authorizing, or permitting a person to guarantee future profits which may result from the resale of real property;

(9) Offering real property for sale or lease without the knowledge and consent of the owner or his authorized agent or on terms other than those authorized by the owner or his authorized agent;

(10) Inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(11) Accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which he has an undisclosed interest;

(12) Negotiating a sale, exchange, or lease of real property directly with an owner or lessee if he knows that the owner has a written outstanding contract in connection with the property, granting an exclusive agency to another broker;

(13) Soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(14) Representing or attempting to represent a real estate broker, other than the employer, without the express knowledge or consent of the employer;

(15) Failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

(16) Paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesman under this act;

(17) Intentionally violating a rule adopted by the board in the interests of the public and in conformity with this act;

(18) Failing, if a salesman, to place, as soon after receipt as is practicably possible, in the custody of his registered broker, deposit money or other money entrusted to him as salesman by a person;

(19) Demonstrating his unworthiness or incompetency to act as a broker or salesman; or

(20) Conviction of a felony.

History: En. Sec. 14, Ch. 250, L. 1963; amd. Sec. 5, Ch. 261, L. 1969; amd. Sec. 188, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "board"

for "commission" in the first sentence and in subdivision (17); inserted "subject to sections 82A-1603 and 82A-1604" in the first sentence; and made minor changes in phraseology, punctuation and style.

**66-1938.1. Hearings—procedure.** (1) When the board has investigated an application for a real estate broker's or salesman's license or, subject to sections 82A-1603 and 82A-1604, investigated the actions of a real estate broker or salesman on the sworn complaint in writing of a person, or on its own motion, and the investigation has revealed reasonable grounds for denying the application, or reasonable indication of a violation of this act as cause for revoking or suspending a license issued to a real estate broker or salesman, the board shall, before denying the application or revoking or suspending the license, give notice and set the matter for hearing.



**History:** En. Sec. 8, Ch. 261, L. 1969; amd. Sec. 189, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "board" for "commission" in two places; inserted

"subject to sections 82A-1603 and 82A-1604"; deleted portions of the section relating to service of process and the procedure for a hearing; and made minor changes in phraseology, punctuation and style.

**66-1939. Repealed.**

**Repeal**

Section 66-1939 (Sec. 16, Ch. 250, L. 1963), relating to appeals from decisions

of the commission, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-1940. Penalties—legal actions.**

**Proof of Injury**

To recover under this section, plaintiff must show not only that real estate broker violated this act but also that plaintiff suffered damage thereby; evidence that broker received commission is not sufficient proof of damage; sellers who exchanged their equity in residence for cash sufficient to pay broker's commission and assignment of buyer's interest in an installment prom-

issory note were not entitled to recovery from broker when only two installments were paid on note in absence of evidence that note was valueless; sellers who made no attempt to contact debtors for payment or to contact buyers for information or assistance were not yet damaged since note might still be fully collectible with interest. *Denny v. Brissonneaud*, — M —, 506 P 2d 77.

**66-1943. Real estate meetings and clinics open to all licensees.** (1) The board may, subject to section 82A-1603, conduct, hold, or assist in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in this connection.

(2) The board may assist libraries and educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees.

**History:** En. Sec. 20, Ch. 250, L. 1963; amd. Sec. 190, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "board"

for "commission" in subsections (1) and (2); inserted "subject to section 82A-1603" in subsection (1); and made minor changes in phraseology, punctuation and style.

**66-1944. Attorney for board.** The attorney general shall act as attorney for the board in actions and proceedings brought by or against it under this act. Fees and expenses of the attorney general acting in this capacity shall be paid out of board moneys in the earmarked revenue fund.

**History:** En. Sec. 21, Ch. 250, L. 1963; amd. Sec. 191, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "board"

for "commission" in two places; and made minor changes in phraseology, punctuation and style.

**66-1945. Publication of directory.** The department shall annually publish a directory of licensees, including a list of licenses suspended and revoked, which shall contain such other data the board determines to be in the interest of real estate licensees and the public.

**History:** En. Sec. 22, Ch. 250, L. 1963; amd. Sec. 192, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "de-

partment" for "commission" at the beginning of the section and "board determines" for "commission may determine" near the end of the section.

## CHAPTER 21—TITLE ABSTRACTERS—REGULATION

## Section

- 66-2101.1. Definitions.  
 66-2102. [Transferred.]  
 66-2103. Organization of board.  
 66-2104. Compensation of members of board—disposition of funds.  
 66-2105. Records of board.  
 66-2108. Examination of applicants.  
 66-2110. Certificate of registration—contents and issuance—temporary certificates.  
 66-2111. Certificate of authority—contents and issuance.  
 66-2113. Bond or other securities required.  
 66-2114. Seal.  
 66-2115. Regulation of abstracters—violations.

**66-2101.1. Definitions.** Unless the context requires otherwise, in this act:

(1) "Board" means the board of abstracters, provided for in section 82A-1602.1; and

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

(3) "Registered abstracter" means a person who has obtained a certificate of registration by the board under this act.

**History:** En. 66-2101.1 by Sec. 193, Ch. 350, L. 1974.

**66-2102. [Transferred.]****Compiler's Notes**

Section 194, Ch. 350, Laws of 1974 re-numbered this section as sec. 82A-1602.1.

**66-2103. (4139.3) Organization of board.** The board shall elect a chairman and a secretary. The board may compel the attendance of witnesses, and the chairman and secretary may administer oaths. The board may make rules necessary for the administration of this act.

**History:** En. Sec. 3, Ch. 105, L. 1931; amd. Sec. 195, Ch. 350, L. 1974.

providing that the secretary need not be a board member but must be a registered abstracter; deleted a clause that the board shall have a seal; and made minor changes in phraseology.

**Amendments**

The 1974 amendment deleted a sentence

**66-2104. (4139.4) Compensation of members of board—disposition of funds.** (1) Each member of the board shall receive a compensation of five dollars (\$5) per day for actual services while attending meetings or otherwise engaged in business connected with the board, and shall receive ten cents (\$.10) per mile for each mile actually traveled, and five dollars (\$5) per day for expenses while absent from home on business connected with the board.

(2) Money received under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

**History:** En. Sec. 4, Ch. 105, L. 1931; amd. Sec. 124, Ch. 147, L. 1963; amd. Sec. 196, Ch. 350, L. 1974.

for "abstracters board of examiners" in subsection (2); added "subject to section 82A-1603(6)" to subsection (2); and made minor changes in phraseology, punctuation and style.

**Amendments**

The 1974 amendment substituted "board"

**66-2105. (4139.5) Records of board.** The department shall keep a register of the names of applicants for registration, and for certificates of authority, with their place of business and other information the board considers appropriate, including the action taken by the board, and the dates on which certificates of registration and certificates of authority are issued.

**History:** En. Sec. 5, Ch. 105, L. 1931;  
amd. Sec. 197, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "board"; and made minor changes in phraseology.

### 66-2107. Repealed.

#### Repeal

Section 66-2107 (Sec. 7, Ch. 105, L. 1931), relating to a definition of registered ab-

stracters, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-2108. (4139.8) Examination of applicants.** A person desiring to obtain a certificate of registration under this act shall make application to the department and shall pay to the department an examination fee of twenty-five dollars (\$25). The application shall be on a form prescribed by the board and shall contain information desired by the board. The board shall fix a date and place for the examination of the applicant, of which notice shall be given the applicant by mail, who shall present himself at the examination. The department, subject to section 82A-1603, shall examine the applicant under the rules adopted by the board.

**History:** En. Sec. 8, Ch. 105, L. 1931;  
amd. Sec. 198, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "board" in the first and last sentences; inserted "subject to section 82A-1603" in the last sentence; and made minor changes in phraseology.

### 66-2109. Repealed.

#### Repeal

Section 66-2109 (Sec. 9, Ch. 105, L. 1931), relating to registration without examina-

tion of abstracters previously certified, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-2110. (4139.10) Certificate of registration—contents and issuance—temporary certificates.** (1) The certificate of registration issued by the department shall recite, among other things, that the holder has complied with this act, and entitles the holder to take charge of an abstract office holding a certificate of authority under this act.

(2) Certificates of registration shall be issued on the payment of a five dollar (\$5) fee and are valid for one (1) year from the date of issuance and shall be renewed annually by the department on application within thirty (30) days prior to expiration and on payment of one dollar (\$1) to the department. The board may authorize the department to issue temporary certificates of registration between meetings of the board.

**History:** En. Sec. 10, Ch. 105, L. 1931;  
amd. Sec. 199, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted references to the department throughout the

section for references to the board or its secretary; inserted "authorize the department" in the last sentence; and made minor changes in phraseology, punctuation and style.



**66-2111. (4139.11) Certificate of authority — contents and issuance.**

(1) A person, firm, or corporation desiring to obtain a certificate of authority under this act shall make application to the department and shall pay to the department an application fee of five dollars (\$5). The application shall be on a form prescribed by the board and shall contain information desired by it.

(2) A person, firm, or corporation, who furnishes satisfactory proof to the board that the applicant has for use in the business a set of abstract books or other system of indices and has in charge of the business a registered abstractor, and who furnishes the bond, or other securities, and pays the application fee is entitled, on compliance with this law, to receive a certificate of authority.

(3) Certificates of authority are valid for one (1) year from the date of issuance and shall be renewed by the department on application within thirty (30) days prior to expiration and on payment of five dollars (\$5) to the department. The application shall be accompanied by an affidavit and such other evidence considered necessary, showing that the applicant has complied with this act.

(4) The certificate of authority issued by the department shall, among other things, recite that the bond or other securities have been filed and approved, and the certificate authorizes the person, firm, or corporation, named in it, to engage in and carry on the business of an abstractor of real estate titles in the county or counties of this state, in which the person, firm, or corporation has for use a set of abstract books or system of indices provided for in section 66-2101, and for that purpose to have access to the public records in an office of a city, county, or of the state during office hours, and to make memoranda or notation therefrom as may be necessary for the purpose of making abstracts, and the compiling, posting, copying, and keeping up of their abstract books, indices, or records, access to be during ordinary office hours.

**History:** En. Sec. 11, Ch. 105, L. 1931; amd. Sec. 200, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted references to the department throughout the

section for references to the board and its secretary; deleted "as provided for in section 66-2101" after "registered abstractor" in subsection (2); and made minor changes in phraseology, punctuation and style.

**66-2112. (4139.12) Repealed.****Repeal**

Section 66-2112 (Sec. 12, Ch. 105, L. 1931; Sec. 1, Ch. 82, L. 1939), relating to

conditions under which abstract books or indices are not required, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-2113. (4139.13) Bond or other securities required.** (1) Before a certificate of authority may be issued, the applicant shall file with the department a bond to be approved by the board, running to the state of Montana, in the penal sum of five thousand dollars (\$5,000), for the use of an owner, mortgagee, or other person having an actual interest in the real estate covered by an abstract of title, or a title insurance company licensed and authorized to do business in this state, who may be aggrieved. The bond or undertaking is for the payment by the abstractor of damages that may be sustained by or may accrue to a person or company by reason

of or on account of an error, deficiency, or mistake in an abstract or certificate of title, or a continuation thereof, made or issued by the abstracter. The bond shall be written by a surety or other company issuing bonds and licensed and authorized to do business in this state. No personal bonds may be accepted. The bond or undertaking shall be in effect for a period of one (1) year, and may be renewed annually by a continuation certificate; however, the continuation certificate may not increase the amount of liability under the original bond. No person, firm, or corporation is required to have in effect with the department, valid bonds in excess of the penal sum of five thousand dollars (\$5,000).

(2) Instead of the bond the applicant may deposit with the state treasurer public bonds or other securities as the board prescribes, approves, and considers sufficient to ensure the payment of the penal sum of five thousand dollars (\$5,000). The securities deposited may be exchanged, with the approval of the board, for other securities. The party depositing the securities shall receive the interest and dividends on the securities deposited. The securities shall be subject to sale and transfer and to the disposal of the proceeds by the board only on the order of a court of competent jurisdiction, and for the benefit of persons aggrieved as in this section provided. The state treasurer shall give his receipt for the securities, and the state is responsible for their custody and safe return.

History: En. Sec. 13, Ch. 105, L. 1931;  
amd. Sec. 201, Ch. 350, L. 1974.

partment" for "board" near the beginning and end of subsection (1); and made minor changes in phraseology, punctuation and style.

#### Amendments

The 1974 amendment substituted "de-

**66-2114. (4139.14) Seal.** A person, firm, or corporation furnishing abstracts of title to real property under this act shall provide a seal, which shall have stamped on it the name and location of the person, firm, or corporation; and shall deposit with the department an impression of the seal and the names of persons authorized to sign certificates to abstracts before the certificate of authority may be issued. The seal shall be affixed to every abstract or certificate of title issued by the person, firm, or corporation, and to every continuation thereof.

History: En. Sec. 14, Ch. 105, L. 1931;  
amd. Sec. 202, Ch. 350, L. 1974.

partment" for "board" near the middle of the section; and made minor changes in phraseology and punctuation.

#### Amendments

The 1974 amendment substituted "de-

**66-2115. (4139.15) Regulation of abstracters—violations.** (1) The board may cancel and revoke a certificate of registration issued to a person under this act for a violation of this act, or on a conviction of the holder of the certificate of a crime involving moral turpitude, or if the board finds the holder to be guilty of habitual carelessness or inattention to business or of fraudulent practices. The board may also cancel and revoke a certificate of authority issued to a person, firm, or corporation under this act for failure to furnish the bond or other securities required by section 66-2113, or new or additional bonds the board considers necessary, or for failure to maintain indices and abstract records, or for failure

to have in charge of the business a registered abstracter, or for violation of this act.

(2) On a verified complaint being filed with the department charging the holder of a certificate of registration with a violation of any of the provisions of subsection (1) of this section the board shall require the holder of the certificate to appear before it on a day fixed by the board, to show cause why the certificate should not be canceled.

**History:** En. Sec. 15, Ch. 105, L. 1931; (2) relating to violations under the act  
amd. Sec. 203, Ch. 350, L. 1974. (for prior law, see parent volume); and  
made minor changes in phraseology, punctuation and style.

#### **Amendments**

The 1974 amendment rewrote subsection

### **CHAPTER 22—VETERINARY MEDICINE—REGULATION OF PRACTICE**

#### **Section**

66-2201. [Transferred.]

66-2201.1. Definitions.

66-2202. Organization of board—quorum—powers.

66-2203. Expenses and funds—records and reports.

66-2204. Applications for license to practice—examinations—fees.

66-2207. Issuance, registration and reinstatement of licenses.

66-2208. Display of license and certificate—arrangement with other boards.

66-2209. Veterinary medicine defined.

66-2210. Refusal, suspension, and revocation of license and certificate.

66-2211. Interpretation of statute—persons not embraced within provisions.

#### **66-2201. [Transferred.]**

##### **Compiler's Notes**

Section 204, Ch. 350, Laws of 1974 re-numbered this section as sec. 82A-1602.24.

**66-2201.1. Definitions.** Unless the context requires otherwise, in this act:

(1) "Board" means the board of veterinarians, provided for in section 82A-1602.24; and

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

**History:** En. 66-2201.1 by Sec. 205, Ch. 350, L. 1974.

**66-2202. (3218) Organization of board — quorum — powers.** (1) A board member shall receive a certificate of appointment from the governor.

(2) The board shall annually elect from its members a president, vice-president, and secretary-treasurer, and shall hold at least two (2) regular meetings each year. At a meeting three (3) members of the board constitute a quorum. If a member of the board, without cause, absents himself from two (2) of its regular meetings consecutively, his office is vacant.

(3) The board may adopt rules and orders necessary for the performance of its duties; prescribe forms for application for examination and license; prepare examinations and the department shall, subject to section 82A-1603, supervise the examination of applicants for license to practice veterinary medicine; obtain the services of professional examina-



tion agencies instead of its own preparation of examinations; and grant and revoke licenses.

(4) The department may employ attorneys, subject to the approval of the attorney general, to assist county attorneys in prosecutions brought under this chapter in the respective district courts of the state or to assist the attorney general in representing the board before the supreme court.

**History:** En. Sec. 2, Ch. 82, L. 1913; re-en. Sec. 3218, R. C. M. 1921; amd. Sec. 2, Ch. 90, L. 1955; amd. Sec. 206, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "board

member" for "veterinary medical examiner" in subsection (1); substituted "department" for "board" in subsections (3) and (4); inserted "subject to section 82A-1603" near the middle of subsection (3); and made minor changes in phraseology, punctuation and style.

**66-2203. (3219) Expenses and funds—records and reports.** (1) Each member of the board is entitled to receive necessary traveling and subsistence expenses.

(2) The department shall keep complete records of the board's proceedings and of its receipts and disbursements and a full and accurate list of persons licensed and registered by the board. These records are public records, and are at all times open to public inspection.

(3) Money received under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

**History:** En. Sec. 3, Ch. 82, L. 1913; re-en. Sec. 3219, R. C. M. 1921; amd. Sec. 3, Ch. 90, L. 1955; amd. Sec. 126, Ch. 147, L. 1963; amd. Sec. 27, Ch. 177, L. 1965; amd. Sec. 26, Ch. 93, L. 1969; amd. Sec. 207, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment deleted a sentence

from subsection (1) providing for a salary for the secretary-treasurer of the board; substituted "department" for "board" at the beginning of subsection (2); added "subject to section 82A-1603(6)" to the end of subsection (3); and made minor changes in phraseology, punctuation and style.

**66-2204. (3220) Applications for license to practice—examinations—fees.** (1) A citizen of the United States desiring to begin the practice of veterinary medicine or veterinary surgery in this state, or who desires to hold himself out to the public as a practitioner of veterinary medicine or veterinary surgery, except as provided in section 66-2211, shall make application to the department for a license to do so. The application shall be on a form furnished by the department, and shall be accompanied by satisfactory evidence of the good moral character of the applicant, and shall present evidence of his having graduated in and received a degree from a legally authorized veterinary medical school having educational standards equal to those approved by the American veterinary medical association. On application, a photostatic copy of the diploma of the applicant shall be submitted to the department for inspection and verification. The photostatic copy remains the property of the department. A person applying for a license to practice shall pay to the department a fee of twenty-five dollars (\$25), which may not be refunded. Subject to section 82A-1603, the board shall, by means of examination, either oral, written or practical, or a combination of oral, written or practical as the board determines, ascertain the professional qualifications for license of

applicants under this act. An investigation under reciprocity arrangements may replace examination for licensees from other states under section 66-2208. The department shall issue a license to all who are found to be, in the judgment of the board, competent to practice. A license may not be issued to a person who is not found by the examination or investigation to be competent.

(2) The examination shall be held in January and June of each year at a time and place specified by the board. The examination shall cover theory and practice, pharmacology and therapeutics, animal sanitation, surgery, communicable diseases, and other subjects, chosen by the board, which are ordinarily included in the curriculum of a school of veterinary medicine recognized and approved by the American veterinary medical association.

(3) The department shall consecutively number applications received and note on each the disposition made of it and preserve them for reference, and shall number consecutively licenses issued.

(4) Applicants must achieve a grade of seventy per cent (70%) in all subjects in order to obtain a license. An applicant who has failed an examination may apply to be re-examined at a subsequent examination, and shall pay another application fee in the amount of twenty-five dollars (\$25), and shall take another complete examination in all subjects.

(5) An applicant for examination may, in the discretion of the board, be given a temporary permit to practice veterinary medicine prior to taking the examination, if the applicant is employed by and working under the supervision of and in the same office with a veterinarian licensed under this act. The temporary permit is valid only until the date of the next examination. Under no circumstances may a second temporary permit be issued to the same person. A temporary permit may not be issued to a person who has failed an examination given under this section.

**History:** En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R. C. M. 1921; amd. Sec. 4, Ch. 90, L. 1955; amd. Sec. 127, Ch. 147, L. 1963; amd. Sec. 7, Ch. 168, L. 1971; amd. Sec. 208, Ch. 350, L. 1974.

#### Amendments

The 1971 amendment deleted "who is over the age of twenty-one (21) years" following "citizen of the United States" at the beginning of the section; and made minor changes in style.

The 1974 amendment substituted references to department for references to the board of examiners and board throughout the section; inserted "subject to section 82A-1603" near the middle of subsection (1); substituted "pharmacology" for "materia medica" and "animal sanitation" for "livestock sanitation" in subsection (2); deleted a clause from subsection (3) relating to veterinarians in practice at time of passage of act; and made minor changes in phraseology, punctuation and style.

#### 66-2205, 66-2206. (3221, 3222) Repealed.

##### Repeal

Sections 66-2205 and 66-2206 (Sees. 5, 6, Ch. 82, L. 1913; Sec. 2, Ch. 150, L. 1919),

relating to a farrier's license, were repealed by Sec. 363, Ch. 350, Laws of 1974.

#### 66-2207. (3223) Issuance, registration and reinstatement of licenses.

(1) The board shall, at the conclusion of a regular examination or after investigation under the reciprocity arrangements of section 66-2208, if in its judgment the applicant is qualified, authorize the department to issue a license to practice veterinary medicine.



(2) Every license granted shall be issued under seal, and shall be signed by the president and secretary-treasurer of the board, and shall state that the licensee has given satisfactory evidence of fitness as to age, character, veterinary medical education, and other matters required by law, and that after full examination or investigation under reciprocity arrangements he has been found qualified to practice.

(3) A person licensed to practice veterinary medicine in this state shall procure from the department before July 1, annually, his certificate of registration. The certificate shall be issued by the department on the payment of a fee to be fixed annually by the board, not exceeding the sum of ten dollars (\$10). The certificate is prima facie evidence of the right of the holder to practice veterinary medicine in this state during the time for which it is issued. Failure of a person licensed to procure a certificate of registration before July 1 annually constitutes a forfeiture of the license held by the person. A person who has thus forfeited his license may have it restored to him by making written application for restoration within one (1) year of the forfeiture setting forth the reasons for failure to procure the certificate of registration at the time specified and accompanied by payment of the registration fee provided for in this section and an additional restoration fee not in excess of ten dollars (\$10) as the board requires. The person making application for restoration of license within one (1) year of its forfeiture is not required to submit to examination.

(4) Notwithstanding any other provisions in this chapter, a person licensed who enters, or is called to active duty by, a branch of the armed services of the United States is entitled to receive automatic registration of his license during the period of his duty with the armed services. However, within one (1) year after release or discharge from duty in the armed services he shall procure a certificate of renewal from the department and pay the regular fee. Failure to procure the certificate of renewal within one (1) year after release or discharge is the equivalent of a failure to procure a certificate of registration before July 1 of any year, and the same forfeiture and restoration requirements apply.

(5) A person licensed shall at all times have his residence and office address on file with the department.

**History:** En. Sec. 7, Ch. 82, L. 1913; re-en. Sec. 3223, R. C. M. 1921; amd. Sec. 5, Ch. 90, L. 1955; amd. Sec. 209, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "board" for "state board of veterinary medical

examiners" in subsection (1); inserted "authorize the department to" before "issue a license" in subsection (1); substituted "department" for references to the board and secretary of the board in subsections (3) through (5); and made minor changes in phraseology, punctuation and style.

**66-2208. (3224) Display of license and certificate—arrangement with other boards.** (1) A person may not practice veterinary medicine in this state without possessing and displaying prominently in his principal office a license and a current and valid certificate of registration issued under this act.

(2) The board may make arrangement with similar boards in the several states in so far as practicable, whereby due credit for state and territorial licenses may be allowed in this state to the licensees of these



boards who desire to secure a license to practice veterinary medicine in this state, and by which licensees of the board in this state may secure credit for license issued by this board, when the licensees desire to secure a license to practice in another state or territory. No arrangement may be made under this section which may lower the standard of practice of veterinary medicine in this state. The board may, if necessary, require an examination of applicants for a license from other states after a careful consideration of the credentials from these states. The board shall establish methods and procedures for investigation of applicants for a license by reciprocity. No license may be issued as a result of reciprocity between the states to an applicant unless he has been lawfully and continuously in practice as a licensed veterinarian for at least one (1) year in the state from which he applies immediately preceding the date of his application for a license to practice in this state.

**History:** En. Sec. 8, Ch. 82, L. 1913; re-en. Sec. 3224, R. C. M. 1921; amd. Sec. 6, Ch. 90, L. 1955; amd. Sec. 210, Ch. 350, L. 1974.

#### **Amendments**

The 1974 amendment substituted "board" for "board of veterinary medical examiners" in subsection (2); and made minor changes in phraseology, punctuation and style.

**66-2209. (3225) Veterinary medicine defined.** (1) A person is considered practicing veterinary medicine when he does any of the following:

(a) Represents himself as or is engaged in the practice of veterinary medicine in any of its branches either directly or indirectly.

(b) Uses words, titles, or letters in this connection or on a display or advertisement or under circumstances so as to induce the belief the person using them is engaged in the practice of veterinary medicine. This use is prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine in any of its branches.

(c) Diagnoses, prescribes, or administers a drug, medicine, appliance, application, or treatment of whatever nature, or performs a surgical operation or manipulation, for the prevention, cure, or relief of a pain, deformity, wound, fracture, bodily injury, physical condition, or disease of animals.

(d) Instructs, demonstrates, or solicits, by a notice, sign, or other indication, with contract either express or implied, or otherwise, with or without the necessary instruments for the administration of biologics or medicines or animal disease cures for the prevention and treatment of disease of animals and remedies for the treatment of internal parasites in animals.

(e) Performs a manual or laboratory procedure for the diagnosis of pregnancy, sterility, or infertility on livestock for remuneration or hire.

(2) A person may not practice veterinary medicine or veterinary surgery in this state unless licensed, and registered as required by this chapter; nor may a person practice veterinary medicine or surgery whose authority to practice is suspended or revoked by the board.

**History:** En. Sec. 9, Ch. 82, L. 1913; re-en. Sec. 3225, R. C. M. 1921; amd. Sec. 7, Ch. 90, L. 1955; amd. Sec. 1, Ch. 191, L. 1965; amd. Sec. 211, Ch. 350, L. 1974.

#### **Amendments**

The 1974 amendment deleted "by the state board of veterinary medical examiners" after "licensed" in subsection (2); and made minor changes in phraseology, punctuation and style.

**66-2210. (3226) Refusal, suspension, and revocation of license and certificate.** (1) The board may either refuse to grant a license or refuse to grant a certificate of registration or suspend or revoke a license and certificate of registration on any of the following grounds:

(a) Fraud or deception in procuring the license.

(b) The publication or use of an untruthful or improper statement, or representation with the view of deceiving the public, or a client or customer in connection with the practice of veterinary medicine.

(c) The conviction of a felony as shown by a certified copy of the record of the court of conviction.

(d) Habitual intemperance in the use of intoxicating liquors, or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs, or conviction of a violation of a federal or state law relating to narcotic drugs.

(e) Immoral, unprofessional, or dishonorable conduct manifestly disqualifying the licensee from practicing veterinary medicine.

(f) Gross malpractice, including failure to furnish to the board, on written application by it, a report or information relating thereto.

(g) The employment of unlicensed persons to perform work which under this chapter can lawfully be done only by persons licensed to practice veterinary medicine.

(h) Fraud or dishonest conduct in applying or reporting diagnostic biological tests or in issuing health certificates.

(i) Failure to keep one's premises in a clean and sanitary condition.

(j) Violation of this act or of the rules or orders of the board.

(k) Revocation by proper authorities for any of the above reasons of a license issued by another state.

(2) The board may neither refuse to issue a license or certificate of registration nor suspend or revoke a license and certificate of registration for any cause, unless the person accused has been given notice and a public hearing by the board.

**History:** En. Sec. 10, Ch. 82, L. 1913; re-en. Sec. 3226, R. C. M. 1921; amd. Sec. 8, Ch. 90, L. 1955; amd. Sec. 212, Ch. 350, L. 1974.

for "state board of veterinary medical examiners" in the first sentence of subsection (1) and in subdivision (1) (j); deleted a final paragraph relating to the procedure for hearings; and made minor changes in phraseology, punctuation and style.

#### **Amendments**

The 1974 amendment substituted "board"

**66-2211. (3227) Interpretation of statute—persons not embraced within provisions.** This chapter does not apply to:

(1) Veterinarians in the performance of their official duties, either civil or military, in the service of the United States, unless they engage in the practice of veterinary medicine in a private capacity.

(2) Laboratory technicians and veterinary research workers, as distinguished from veterinarians, in the employ of this state, or the United States, and engaged in labors in laboratories under the direct supervision of the board of livestock, Montana state university or the United States.

(3) Lawfully qualified veterinarians from other states or a foreign country meeting legally licensed and registered Montana veterinarians in this state in consultation.

(4) A veterinarian residing on a border of a neighboring state and authorized under the laws thereof to practice veterinary medicine therein, who is actually called to attend cases in this state, but who does not open an office or appoint a place to meet patients or receive calls in this state, if veterinarians licensed and registered in this state are extended a like privilege to engage in the practice of veterinary medicine to the same extent in the neighboring state.

(5) The employment of veterinary medical students who have successfully completed three (3) years of the professional curriculum in veterinary medicine at a college having educational standards equal to those approved by the American veterinary medical association and authorized by law to confer degrees as assistants to veterinarians licensed and registered under this chapter. However, this employment may not be contracted for or entered into except after written application for approval directed to the board and the written grant of approval by the board. This employment may not be for a period in excess of six (6) months from the date of completion of the third year of study.

(6) The operations known and designated as spaying, castrating, or dehorning of cattle, sheep, horses, swine and related species are not the practice of veterinary medicine within the meaning of this chapter.

(7) This chapter does not prohibit a person from treating his own farm animals or being assisted in this treatment by his employees regularly employed in the conduct of his business, or by other persons whose services are rendered gratuitously in case of emergency.

(8) This chapter does not prohibit the selling of veterinary remedies and instruments by a registered pharmacist at his regular place of business.

**History:** En. Sec. 11, Ch. 82, L. 1913; re-en. Sec. 3227, R. C. M. 1921; amd. Sec. 9, Ch. 90, L. 1955; amd. Sec. 213, Ch. 350, L. 1974.

#### **Amendments**

The 1974 amendment substituted "board of livestock" for "Montana livestock sani-

tary board" in subsection (2); substituted "Montana state university" for "Montana state college" in subsection (2); substituted "cattle, sheep, horses, swine and related species" in subsection (6) for "large animals"; and made minor changes in phraseology, punctuation and style.

## **CHAPTER 23—ENGINEERS AND LAND SURVEYORS**

### **Section**

- 66-2326. Definitions.
- 66-2327. [Transferred.]
- 66-2333. Receipts and disbursements—assistants.
- 66-2334. Records and reports—register.
- 66-2335. Roster.
- 66-2337. Application for registration—fees.
- 66-2338. Examinations.
- 66-2339. Certificates of registration—seal.
- 66-2340. Expiration and renewals—fee.
- 66-2344. Registration of persons registered by other states or authorities.
- 66-2345. Revocation of registration—hearings—reissuance of certificate.
- 66-2346. Violations—penalties—enforcement.
- 66-2347. Practices to which act inapplicable.



**66-2325. Repealed.**

**Repeal** act, was repealed by Sec. 363, Ch. 350, Laws of 1974.  
Section 66-2325 (Sec. 2, Ch. 150, L. 1957), relating to the short title of the

**66-2326. Definitions.** Unless the context requires otherwise, in this act:

(1) "Engineer" or "professional engineer" means a person who, by reason of his special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to practice engineering, as attested by his legal registration as a professional engineer.

(2) "Engineer-in-training" means a candidate for registration as a professional engineer who is a graduate in an engineering curriculum of four (4) years or more from a school or college approved as of satisfactory standing by the engineers' council for professional development or its successor as an agency evaluating professional engineering curricula, or equivalent curricula approved by the board, or who has had four (4) years or more of experience in engineering work of a character satisfactory to the board; and who, in addition, has successfully passed the examination in the fundamental engineering subjects under section 66-2338, and who has received a certificate stating that he has successfully passed this portion of the professional examinations.

(3) "Practice of engineering" means any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical, and engineering sciences to professional services or creative work such as consultation, investigation, evaluation, planning, engineering planning service performed in connection with city, county, regional, and state planning, design, and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with public or private utilities, structures, buildings, machines, equipment, processes, works, or projects, and including architectural work incidental to the practice of engineering. The term does not include the work ordinarily performed by persons who operate or maintain machinery, equipment, communication lines, signal circuits, electric power lines, or pipelines.

(4) "Land surveyor" means a person who engages in the practice of land surveying.

(5) "Practice of land surveying" includes surveying of areas for their correct determination and description and for conveyancing, or for the establishment or re-establishment of land boundaries and the plotting of lands and subdivisions.

(6) "Board" means the board of professional engineers and land surveyors, provided for in section 82A-1602.11.

(7) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

**History:** En. Sec. 3, Ch. 150, L. 1957; Ch. 364, L. 1971; amd. Sec. 214, Ch. 350, L. amd. Sec. 1, Ch. 282, L. 1969; amd. Sec. 1, 1974.

**Amendments**

The 1971 amendment inserted "engineering planning service performed in connection with city, county, regional and state planning" in the paragraph defining practice of engineering.

The 1974 amendment substituted subsection (6) for a definition referring to the "state board of registration for professional engineers and land surveyors"; added the definition of "Department"; and made minor changes in phraseology, punctuation and style.

**66-2327. [Transferred.]****Compiler's Notes**

Section 215, Ch. 350, Laws of 1974 renumbered this section as sec. 82A-1602.11.

**66-2328. Repealed.****Repeal**

Section 66-2328 (Sec. 5, Ch. 150, L. 1957), relating to the qualifications for the members of the state board of regis-

tration for professional engineers and land surveyors, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-2330. Repealed.****Repeal**

Section 66-2330 (Sec. 7, Ch. 150, L. 1957), relating to removal of board mem-

bers and vacancies on the board, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-2333. Receipts and disbursements—assistants.** The department shall collect all moneys under this act, and shall deposit these moneys in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

**History:** En. Sec. 10, Ch. 150, L. 1957; amd. Sec. 123, Ch. 147, L. 1963; amd. Sec. 28, Ch. 177, L. 1965; amd. Sec. 216, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment rewrote this section. For prior version, see parent volume.

**66-2334. Records and reports—register.** (1) The department shall keep a record of its proceedings and a register of the board's proceedings and a register of applicants for registration, which shall show (a) the name, age, and residence of each applicant; (b) the date of the application; (c) the place of business of the applicant; (d) his educational and other qualifications; (e) the branch or branches of engineering in which the applicant qualified; (f) whether an examination was required; (g) whether the applicant was rejected; (h) whether a certificate of registration was granted; (i) the date of the action of the board; and (j) other information considered necessary by the board.

(2) The records of the department are prima facie evidence of the proceedings of the board and a transcript thereof, certified by the department, is admissible in evidence as if the original were produced.

**History:** En. Sec. 11, Ch. 150, L. 1957; amd. Sec. 27, Ch. 93, L. 1969; amd. Sec. 217, Ch. 350, L. 1974.

of subsections (1) and (2); substituted "department" for "secretary of the board under seal" before "is admissible" in subsection (2); deleted a third subsection relating to the board reporting under section 82-4002; and made minor changes in phraseology.

**Amendments**

The 1974 amendment substituted "department" for "board" at the beginning

**66-2335. Roster.** A roster showing the names and places of business of registered professional engineers and registered land surveyors shall

be published by the department during the month of April each year. Copies of this roster shall be mailed to each person registered, placed on file with the secretary of state, the clerk of each incorporated city and town and in the office of each county clerk and recorder within the state, and furnished to the public on request.

**History:** En. Sec. 12, Ch. 150, L. 1957;  
amd. Sec. 218, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "secretary of the board"; and made minor changes in phraseology.

**66-2337. Application for registration—fees.** (1) Applications for registration shall be on forms prescribed by the board and furnished by the department, shall contain statements made under oath, showing the applicant's education and a detailed summary of his technical work, and shall contain not less than five (5) references, of whom three (3) or more shall be engineers or land surveyors having personal knowledge of his engineering or land surveying experience.

(2) The registration fee for professional engineers is thirty-five dollars (\$35), twenty dollars (\$20) of which shall accompany application, the remaining fifteen dollars (\$15) to be paid on issuance of a certificate. When a certificate of qualification issued by the national bureau of engineering registration is accepted as evidence of qualification, the total fee for registration as professional engineer is twenty dollars (\$20).

(3) The fee for engineer-in-training is twenty dollars (\$20), which shall accompany the application and shall include the cost of examination and issuance of a certificate. When certification as an engineer-in-training by another state, or a territory or possession of the United States or country, is accepted as evidence of qualification, the fee for engineer-in-training is five dollars (\$5). When registration as a professional engineer is completed by an engineer-in-training, an additional fee of fifteen dollars (\$15) shall be paid before issuance of a certificate as a professional engineer.

(4) The registration fee for land surveyors is thirty-five dollars (\$35), which shall accompany the application. The fee for registration as both a professional engineer and land surveyor is fifty dollars (\$50), thirty-five dollars (\$35) of which shall accompany the application, the remaining fifteen dollars (\$15) to be paid on issuance of a certificate.

(5) If the board denies issuance of a certificate of registration to any applicant the initial fee deposited shall be retained as an application fee.

**History:** En. Sec. 14, Ch. 150, L. 1957;  
amd. Sec. 5, Ch. 282, L. 1969; amd. Sec. 2,  
Ch. 364, L. 1971; amd. Sec. 219, Ch. 350,  
L. 1974.

The 1974 amendment substituted "prescribed by the board and furnished by the department" in subsection (1) for "prescribed and furnished by the board"; and made minor changes in phraseology, punctuation and style.

#### Amendments

The 1971 amendment increased all the fees prescribed by this section.

**66-2338. Examinations.** (1) The board may require an applicant to take a written or oral examination which shall be held at a time and place the board determines. The board may require a registrant to take a written



or oral examination, or both, in a proceeding to revoke, reprimand, suspend, or refuse to renew. When examinations are required on fundamental engineering subjects (such as are ordinarily given in college curricula), the applicant may take this part of the professional examination prior to his completion of the requisite years of experience in engineering work, and satisfactory passage of this portion of the professional examination by the applicant constitutes a credit for a period of ten (10) years. The department shall issue to each applicant successfully passing the examination in fundamental engineering subjects a certificate stating that he has passed the examination and that his name has been recorded as an engineer-in-training.

(2) The scope of the examinations and the methods of procedure shall be prescribed by the board, but with special reference to the applicant's ability to design and supervise engineering works to ensure the safety of life, health, and property. Examinations shall be given for the purpose of determining the qualifications of applicants for registration separately in engineering and in land surveying. A candidate failing on examination may apply for re-examination at the expiration of six (6) months and will be re-examined without payment of additional fee. Subsequent examinations will be granted on payment of a fee determined by the board.

History: En. Sec. 15, Ch. 150, L. 1957; amd. Sec. 6, Ch. 282, L. 1969; amd. Sec. 220, Ch. 350, L. 1974.

partment" for "board" in the last sentence of subsection (1); and made minor changes in phraseology, punctuation and style.

#### Amendments

The 1974 amendment substituted "de-

**66-2339. Certificates of registration—seal.** (1) The department shall issue a certificate of registration, on payment of the registration fee to an applicant who, in the opinion of the board, has satisfactorily met the requirements of this act. In the case of a registered engineer, the certificate shall authorize the "practice of engineering." In the case of an engineer-in-training, the certificate shall state that the applicant has successfully passed the examination in fundamental engineering subjects required by the board and has been enrolled as an "engineer-in-training." In the case of a registered land surveyor, the certificate shall authorize the "practice of land surveying." Certificates of registration and certificates as engineer-in-training shall show the full name of the registrant, shall have a serial number, and shall be signed by the chairman and secretary of the board under seal of the board.

(2) The issuance of a certificate of registration by the department is prima facie evidence that the person named is subject to the responsibilities and entitled to all the rights and privileges of a registered professional engineer or of a registered land surveyor, while the certificate remains unrevoked or unexpired.

(3) A registrant shall on registration obtain a seal of the design authorized by the board, bearing the registrant's name and the legend, "Registered Professional Engineer," or "Registered Land Surveyor." Plans, specifications, plats, and reports prepared by a registrant shall be

stamped with the seal when filed with public authorities, during the life of the registrant's certificate. It is unlawful for anyone to stamp or seal documents with the seal after the certificate of the registrant named has expired or has been revoked, unless the certificate has been renewed or reissued.

**History:** En. Sec. 16, Ch. 150, L. 1957; amd. Sec. 221, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "board" in the first sentences of subsections (1) and (2); and made minor changes in phraseology, punctuation and style.

**66-2340. Expiration and renewals—fee.** Certificates of registration expire on December 31 and become invalid on that date unless renewed. The department shall notify every person registered under this act, of the date of the expiration of his certificate and the amount of the fee required for its renewal for one (1) year. This notice shall be mailed at least one (1) month in advance of the date of the expiration of the certificate. Renewal may be made during the month of December by the payment of a fee of ten dollars (\$10) for either a professional engineer or land surveyor or both. Failure on the part of a registrant to renew his certificate annually in the month of December does not deprive him of the right of renewal; however, a registrant who fails to pay the renewal fee for two (2) consecutive years shall be considered a new applicant and is required to submit a new application.

**History:** En. Sec. 17, Ch. 150, L. 1957; amd. Sec. 7, Ch. 282, L. 1969; amd. Sec. 222, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment deleted a clause

from the first sentence relating to expiration of certificates issued prior to January 1, 1958; substituted "department" for "secretary of the board" in the second sentence; and made minor changes in phraseology, punctuation and style.

### 66-2342. Repealed.

#### Repeal

Section 66-2342 (Sec. 19, Ch. 150, L. 1957), relating to issuing certificates to professional engineers in practice on the

effective date of the original act and persons in the military, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-2344. Registration of persons registered by other states or authorities.** The department, subject to approval by the board, may, on application and payment of a fee of twenty dollars (\$20), issue a certificate of registration as a professional engineer to a person who holds a certificate of qualification or registration issued to him by the national bureau of engineering registration, or of a state, territory, or possession of the United States, or of a country, if the applicant's qualifications meet the requirements of this act and the rules of the board.

**History:** En. Sec. 21, Ch. 150, L. 1957; amd. Sec. 8, Ch. 282, L. 1969; amd. Sec. 3, Ch. 364, L. 1971; amd. Sec. 223, Ch. 350, L. 1974.

#### Amendments

The 1971 amendment increased the registration fee from \$10 to \$20.

The 1974 amendment substituted "The

department, subject to approval by the board" in the first sentence for "The board"; and made minor changes in phraseology and punctuation.

#### Repealing Clause

Section 4 of Ch. 364, Laws 1971 repealed all acts and parts of acts in conflict therewith.

**66-2345. Revocation of registration—hearings—reissuance of certificate.** (1) The board may revoke, reprimand, suspend, or refuse to renew the certificate of a registrant found guilty of:

- (a) Fraud or deceit in obtaining a certificate of registration;
- (b) Gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a registered professional engineer or land surveyor;
- (c) A felony; or
- (d) Failure of a land surveyor to comply with the Corner Recordation Act.

(2) Any person may make charges of fraud, deceit, gross negligence, incompetency, or misconduct against a registrant. The charges shall be made by affidavit, and subscribed and sworn to by the person making them, and filed with the department.

(3) Charges, unless dismissed by the board as unfounded or trivial, shall be heard by the board within three (3) months after the date on which they were made.

(4) If, after hearing, four (4) or more members of the board vote in favor of sustaining the charges, the board shall reprimand, suspend, refuse to renew, or revoke the certificate of registration of the registered professional engineer or land surveyor.

(5) The board, for reasons it considers sufficient, may reissue a certificate of registration to a person whose certificate has been revoked, if four (4) or more members of the board vote in favor of the reissuance. A new certificate of registration, to replace a certificate revoked, lost, destroyed, or mutilated, may be issued by the department, subject to the rules of the board, and a charge of three dollars (\$3) shall be made for the issuance.

**History:** En. Sec. 22, Ch. 150, L. 1957; amd. Sec. 9, Ch. 282, L. 1969; amd. Sec. 224, Ch. 350, L. 1974.

#### **Amendments**

The 1974 amendment substituted "department" for "secretary of the board" in subsection (2); deleted a fourth para-

graph relating to notifying an accused of the time, place and procedure for a hearing; inserted "by the department" after "may be issued" in the second sentence of subsection (5); deleted a final paragraph relating to appeal of a decision of the board; and made minor changes in phraseology, punctuation and style.

**66-2346. Violations — penalties — enforcement.** (1) A person who practices or offers to practice engineering or land surveying in this state without being registered under this act, or a person presenting or attempting to use as his own the certificate of registration or the seal of another, or a person who gives false or forged evidence to the board or department in obtaining a certificate of registration, or a person who falsely impersonates another registrant, or a person who attempts to use an expired or revoked certificate of registration, or a person who violates this act, is guilty of a misdemeanor, and shall, on conviction, be fined not less than one hundred dollars (\$100), nor more than five hundred dollars (\$500), or imprisoned for a period not exceeding three (3) months, or both.



(2) All officers of the law of this state, or a political subdivision thereof, shall enforce this act and prosecute persons violating it. The attorney general shall act as legal adviser of the board and render legal assistance necessary in carrying out this chapter.

History: En. Sec. 23, Ch. 150, L. 1957; amd. Sec. 225, Ch. 350, L. 1974.

middle of subsection (1) and inserted "or department"; substituted "this chapter" for "this act" at the end of subsection (2); and made minor changes in phraseology, punctuation and style.

#### Amendments

The 1974 amendment deleted "or any member thereof" after "board" near the

**66-2347. Practices to which act inapplicable.** This act does not prevent or affect:

(1) The practice of any other legally recognized professions or trades;  
(2) The mere execution of work by a contractor, as distinguished from its planning or design or the supervision of the construction of work as a foreman or superintendent;

(3) The practice of a person not a resident of and having no established place of business in this state, practicing or offering to practice in this state the profession of engineering, when the practice does not exceed in the aggregate more than thirty (30) days in a calendar year; if the person is legally qualified by registration to practice the profession in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this act;

(4) The practice of a person not a resident of and having no established place of business in this state, or who has recently become a resident, practicing or offering to practice engineering or land surveying in this state for more than thirty (30) days in a calendar year, if he has filed with the department an application for a certificate of registration and has paid the fee required by this act, and if the person is legally qualified by registration to practice engineering or land surveying in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this act. This practice may continue only for the time the board requires for the consideration of the application for registration;

(5) The performance of professional engineering functions or work by a person who is an employee or acts under the supervision and direction of a professional engineer, if the person is not in responsible charge of engineering work;

(6) The practice of professional engineering by licensed architects where the practice is purely incidental to their practice of architecture;

(7) The practice of officers and employees of the federal government while engaged in this state in the practice of engineering or land surveying, for the government; or

(8) The practice of professional engineering or land surveying in this state by a firm, copartnership, corporation, or joint stock association, or by its members, officers, or employees on its behalf, if each person in responsible charge of activities of the firm, copartnership, corporation, or

joint stock association which constitutes the practice is a professional engineer or land surveyor holding a certificate of registration under this act.

History: En. Sec. 24, Ch. 150, L. 1957; amd. Sec. 10, Ch. 282, L. 1969; amd. Sec. 226, Ch. 350, L. 1974.

partment" for "board" in the first sentence of subdivision (4); and made minor changes in phraseology, punctuation and style.

#### Amendments

The 1974 amendment substituted "de-

### CHAPTER 24—PLUMBERS

#### Section

##### 66-2401.1. Definitions.

- 66-2402. Application for state license—qualifications of licensees.
- 66-2403. Compensation—examination of applicants.
- 66-2404. Application for license—information required—firms or corporations.
- 66-2405. Examination fee—expiration of license—annual renewal—fees—bond required of master plumbers.
- 66-2406. Apprentices—rules—record.
- 66-2407. Disposition of license fees.
- 66-2409. Quorum of board—rules.
- 66-2414. Rules of board—chairman.
- 66-2416. Minimum standards—state plumbing code—fee for copy of code.
- 66-2417. District court—jurisdiction—restraining orders.
- 66-2420. Revocation or suspension—initiation of proceedings—procedure.
- 66-2422. Hearing on revocation or suspension of license—procedure.
- 66-2426. Exceptions from act.
- 66-2427. Fixture fee—definition—payment—penalty.

**66-2401.1. Definitions.** Unless the context requires otherwise, in this act:

(1) "Board" means the board of plumbers, provided for in section 82A-1602.22; and

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. 66-2401.1 by Sec. 227, Ch. 350, L. 1974.

**66-2402. Application for state license—qualifications of licensees.** (1) A person desiring to work at the business of plumbing in a city or town shall file his application for a license with the department, and shall at the time and place designated by the board, be examined as to his qualifications for working in this business.

(2) The following requirements shall be met by applicants for a license:

(a) For journeyman plumbers:

(i) A specific record of five (5) years experience in the field of plumbing, of a character satisfactory to the board. This experience requirement may be fulfilled by working five (5) years in a major phase of the plumbing business, or by completing an apprenticeship program meeting the standards set by the department of labor and industry or the United States department of labor, bureau of apprenticeship, or credit towards this experience requirement may be given for time spent at-

tending trade or other schools specializing in training of value in the plumbing business and approved by the board.

(ii) Satisfactory completion of an examination conducted by the department, subject to section 82A-1603(4), testing the applicant's general knowledge of subjects necessary to plumbing, testing his knowledge of techniques and methods employed in the plumbing business, and establishing by practical demonstration his competence in the special skills required in plumbing.

(b) For master plumbers:

(i) Evidence of five (5) years' experience as a journeyman plumber.

(ii) Evidence of three (3) years' experience in supervisory capacities in the plumbing business.

(iii) Satisfactory completion of an examination for master plumbers testing his knowledge of the plumbing business and demonstrating his familiarity with business practices normally encountered in the plumbing business.

**History:** En. Sec. 2, Ch. 203, L. 1949; amd. Sec. 1, Ch. 186, L. 1965; amd. Sec. 228, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "secretary of the board of plumbing examiners" in subsection (1);

substituted "department of labor and industry" for "Montana state apprenticeship council" in subdivision (2)(a)(i); substituted "department, subject to section 82A-1603(4)" for "board" in subdivision (2)(a)(ii); and made minor changes in phraseology, punctuation and style.

**66-2403. Compensation—examination of applicants.** (1) A member of the board is entitled to a compensation of twenty dollars (\$20) per diem for each day while actually engaged in the work of the board.

(2) An applicant for a license to work at the business of plumbing shall be examined as to his qualifications by the department, subject to section 82A-1603(4). The department shall examine each applicant for a license, to determine his qualifications and fitness for carrying on the business of a master plumber or journeyman plumber, and if the applicant successfully passes the examination prescribed by the board, then a license shall be issued to the applicant authorizing him to engage in the business and occupation of a master plumber or journeyman plumber, as the case may be. The license, when issued, authorizes the holder to carry on the business of a master plumber or a journeyman plumber, as the case may be, in any city or town in this state.

**History:** En. Sec. 3, Ch. 203, L. 1949; amd. Sec. 16, Ch. 251, L. 1959; amd. Sec. 2, Ch. 185, L. 1961; amd. Sec. 143, Ch. 147, L. 1963; amd. Sec. 2, Ch. 186, L. 1965; amd. Sec. 229, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment deleted a portion of subsection (1) and a final paragraph of the section relating to the creation of

the former board of plumbing examiners; deleted from subsection (1) a clause providing that board members be paid only from revenue realized under the act; substituted "department" for "board of examiners of plumbers" and "board" in subsection (2); inserted "subject to section 82A-1603(4)" in the first sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

**66-2404. Application for license—information required—firms or corporations.** A person, firm, or corporation desiring to engage in or work in the business of plumbing, either as a master plumber or as a journey-



man plumber, in this state, shall apply to the department by filing a written application stating his place of residence, age, experience, and the place where he has acquired his experience, and shall at a time and place designated by the board be examined as to his qualifications for the license. In the case of a firm or corporation, the examination and issuing of a license to one (1) member of the firm, or to the manager of the corporation, satisfies the requirements of this act as to master plumbers, but not as to journeymen plumbers. A person may not do the work of a master plumber unless licensed under this act.

**History:** En. Sec. 4, Ch. 203, L. 1949; amd. Sec. 230, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "de-

partment" for "secretary of said board of plumbing examiners" in the first sentence; and made minor changes in phraseology, punctuation and style.

**66-2405. Examination fee—expiration of license—annual renewal—fees—bond required of master plumbers.** No applicant for a master plumber's license may submit to the examinations prescribed by the board until he has deposited with the department fifty dollars (\$50) as an examination fee, and no applicant for a journeyman plumber's license may submit to the examination prescribed by the board until he has deposited with the department twenty-five dollars (\$25) as an examination fee. A license when issued expires one (1) year from the date of issuance. A license issued to a master plumber or a journeyman plumber may be renewed annually, without examination, at any time prior to its expiration, by a written request for its renewal, directed to the department, and the payment of twenty-five dollars (\$25) for a renewal of a master plumber's license, and ten dollars (\$10) for a journeyman plumber's license, and renewal is also for the period of one (1) year. No master plumber's license may be issued or renewed unless the applicant has deposited with the department a good and sufficient bond to be approved by the board, or cash in the amount of five thousand dollars (\$5,000) to ensure the faithful performance of his duties arising out of the state plumbing code or this chapter.

**History:** En. Sec. 5, Ch. 203, L. 1949; amd. Sec. 3, Ch. 185, L. 1961; amd. Sec. 1, Ch. 237, L. 1965; amd. Sec. 231, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "board"

for "board of plumbing examiners" throughout the section; substituted "department" for "secretary of the said board" and "board" throughout the section; and made minor changes in phraseology, punctuation and style.

**66-2406. Apprentices—rules—record.** This act does not prohibit a person from working as an apprentice in the trade of plumbing with a plumber licensed by the department, and under the rules made by the board. The name and residence of each apprentice, and the names and residences of their employers, shall be filed with the department, and a record shall be kept by the department, showing the names and residences of these apprentices.

**History:** En. Sec. 6, Ch. 203, L. 1949; amd. Sec. 232, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "board"

for "board of plumbing examiners" in the first sentence; substituted "department" for "board" throughout the section; and made minor changes in phraseology.

**66-2407. Disposition of license fees.** Money paid for license fees under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

**History:** En. Sec. 7, Ch. 203, L. 1949; amd. Sec. 144, Ch. 147, L. 1963; amd. Sec. 233, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "board" for "board of plumbing examiners"; added "subject to section 82A-1603(6)"; and made minor changes in phraseology.

**66-2409. Quorum of board—rules.** (1) A majority of the board constitutes a quorum.

(2) The board may adopt rules necessary to carry out this act.

**History:** En. Sec. 9, Ch. 203, L. 1949; amd. Sec. 234, Ch. 350, L. 1974.

for "board of plumbing examiners"; and made minor changes in phraseology and style.

**Amendments**

The 1974 amendment substituted "board"

**66-2410. Repealed.**

**Repeal**

Section 66-2410 (Sec. 10, Ch. 203, L. 1949), relating to issuing licenses to

plumbers in business on the effective date of the original act, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-2413. Repealed.**

**Repeal**

Section 66-2413 (Sec. 2, Ch. 251, L. 1959), relating to making the board of

plumbing examiners the state plumbing board, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-2414. Rules of board—chairman.** The board shall adopt rules for the transaction of its business and the department shall keep a record of the board's official actions. It shall annually select a chairman from its members.

**History:** En. Sec. 3, Ch. 251, L. 1959; amd. Sec. 235, Ch. 350, L. 1974.

partment" before "shall keep a record"; deleted a sentence authorizing the board to employ a secretary; and made minor changes in phraseology.

**Amendments**

The 1974 amendment inserted "the de-

**66-2416. Minimum standards—state plumbing code—fee for copy of code.** (1) The board shall by rule prescribe minimum standards which are uniform and which are thereafter effective for all new plumbing installations. The rules shall contain the minimum requirements for plumbing set forth in the American standard national plumbing code, numbered ASA A40.8-1955, and published by the American society of mechanical engineers. Except as provided in subsection (2) of this section, on approval of the department of health and environmental sciences and the attorney general, and publication, the rules become the state plumbing code and have the force of law. A copy of the code shall be supplied to each person licensed under sections 66-2401 through 66-2411, or any other interested person, for a fee of no more than five dollars (\$5).

(2) Rules relating to building and equipment standards covered by the state or a municipal building code are effective after approval by the department of administration and filing with the secretary of state.

**History:** En. Sec. 5, Ch. 251, L. 1959; amd. Sec. 18, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 236, Ch. 350, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 226 and once by Ch. 350. Neither amendatory act mentioned the changes made in the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 226, Laws of 1974, substituted "department of administration" for "state building code council" in subsection (2).

Chapter 350, Laws of 1974, substituted "board" for "state plumbing board" in subsection (1); substituted "department of health and environmental sciences" for "state board of health" in subsection (1); substituted "department of administration" for "state building code council" in subsection (2); and made minor changes in phraseology, punctuation and style.

**66-2417. District court—jurisdiction—restraining orders.** The district court of any county has jurisdiction in equity, on application of the board or the department of health and environmental sciences, to enforce this act and to restrain from connection any new plumbing installations, on finding, after hearing, that the plumbing is inferior to the standards of the state plumbing code.

**History:** En. Sec. 6, Ch. 251, L. 1959; amd. Sec. 237, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "board"

for "state plumbing board" and "department of health and environmental sciences" for "state board of health"; and made minor changes in phraseology.

**66-2420. Revocation or suspension—initiation of proceedings—procedure.** Proceedings for the revocation or suspension of a plumber's license may be taken by the board on its motion, for matters in its knowledge, or may be taken on the information of another. Accusations must be in writing, and verified by a party familiar with the facts charged. On receiving the accusation the board shall, if it considers the accusation sufficient, make an order setting it for hearing, and requiring the accused to appear and answer the charge or accusation at the hearing, in the county in which the alleged violation occurred.

**History:** En. Sec. 9, Ch. 251, L. 1959; amd. Sec. 238, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment deleted a clause requiring the filing of three copies of

the accusations with the secretary of the board; deleted a clause requiring the secretary to send one such copy and a copy of the board's order to the accused ten days before the hearing; and made minor changes in phraseology.

#### 66-2421. Repealed.

##### Repeal

Section 66-2421 (Sec. 10, Ch. 251, L. 1959), relating to service of process and

appearance of the accused, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-2422. Hearing on revocation or suspension of license—procedure.** If the accused does not appear the board may proceed and determine the accusation in his absence. If the accused confesses the accusation or refuses to answer the charge, or if on the hearing, the board finds the charge or



accusation true, it may order either revoking the license of the accused or suspending it for a fixed period.

**History:** En. Sec. 11, Ch. 251, L. 1959; sentences relating to right to benefit of  
amd. Sec. 239, Ch. 350, L. 1974. counsel and powers of the board to compel  
attendance of witnesses and hear evidence;  
and made minor changes in phraseology.

#### Amendments

The 1974 amendment deleted two final

### 66-2423. Repealed.

#### Repeal

Section 66-2423 (Sec. 12, Ch. 251, L. 1959), relating to judicial review of deci- sions of the board, was repealed by Sec. 363, Ch. 350, Laws of 1974.

### 66-2425. Repealed.

#### Repeal

Section 66-2425 (Sec. 14, Ch. 251, L. 1959), relating to the effective date of the state plumbing code, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-2426. Exceptions from act.** This act shall not be construed to apply to, or to affect, installation of water conditioner services in private dwellings or plumbing installations in any mines, mills, smelters, refineries, reduction works, public utilities, manufacturing industries, or plumbing installations on farms having their own individual water supply or sewage disposal system.

**History:** En. Sec. 15, Ch. 251, L. 1959; amd. Sec. 1, Ch. 44, L. 1973.

#### Amendments

The 1973 amendment inserted the exemption of installation of water conditioner services in private dwellings.

**66-2427. Fixture fee—definition—payment—penalty.** For the purpose of providing adequate inspection and enforcement of the state plumbing code there shall be collected a fixture fee of fifty cents (\$.50) per fixture for every fixture installed under the direction of a master plumber. For this purpose, a fixture means a device connected by a water connection to a water system or by a trap to a sewer line. This fixture fee is payable before installation by the licensed master plumber responsible for installation of the fixture. It is payable to the department under rules adopted by the board. The inspection and enforcement of the state plumbing code are assigned to the department. Installation of fixtures by a licensed master plumber without payment of the fee subjects the master plumber to a fine of one hundred dollars (\$100) for each offense or to forfeiture of his bond under section 66-2405.

**History:** En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974.

partment" for "state plumbing board" in the fourth sentence; substituted "department" for "state plumbing inspector" in the fifth sentence; and made minor changes in phraseology and style.

#### Amendments

The 1974 amendment substituted "de-

## CHAPTER 25—PHYSICAL THERAPISTS PRACTICE ACT

#### Section

- 66-2501. Definitions.
- 66-2502. Qualifications of applicants for license.
- 66-2503. Application for examination—examination fee.
- 66-2505. Applicants licensed in another state.

- 66-2506. Examination of applicants—scope.  
 66-2507. Issuance of license—certificate as evidence.  
 66-2508. Annual renewal of license.  
 66-2510. Temporary licenses.  
 66-2514. Rules adopted by board—records of proceedings and licensees.

**66-2501. Definitions.** Unless the context requires otherwise, in this act:

(1) "Physical therapy" means the treatment of a bodily or mental condition of a person by the use of the physical, chemical, and other properties of heat, light, water, electricity, massage, and therapeutic exercise including physical rehabilitation procedures. The use of roentgen rays and radium for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not authorized under the term "physical therapy" as used in the act.

(2) "Physical therapist" means a person who practices physical therapy.

(3) "Board" means the Montana state board of medical examiners, provided for in section 82A-1602.15.

(4) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. Sec. 1, Ch. 39, L. 1961; amd. Sec. 241, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted the definition of "board" in subdivision (3) for

"board of medical examiners"; substituted subdivision (4) for a subdivision reading "Words importing the masculine gender may be applied to females"; and made minor changes in punctuation and phraseology.

**66-2502. Qualifications of applicants for license.** To be eligible for a license as a physical therapist an applicant must:

(1) Be of good moral character;

(2) Have been graduated from a school of physical therapy approved by the council of medical education and hospitals of the American Medical Association;

(3) Either (a) pass to the satisfaction of the board an examination to determine his fitness for practice as a physical therapist; or, (b) be entitled to a license without examination under section 66-2505 or 66-2506.

History: En. Sec. 2, Ch. 39, L. 1961; amd. Sec. 8, Ch. 168, L. 1971; amd. Sec. 242, Ch. 350, L. 1974.

#### Amendments

The 1971 amendment deleted a former subdivision (1) reading "Be at least twenty-one years old"; and redesignated for-

mer subdivisions (2) to (4), inclusive, as subdivisions (1) to (3), inclusive.

The 1974 amendment deleted "from the board" near the beginning of the section after "for a license"; deleted "by it" in subdivision (3)(a) after "examination"; and made a minor change in phraseology.

**66-2503. Application for examination—examination fee.** Unless entitled to a license under section 66-2505, a person who desires to be licensed as a physical therapist shall apply to the department, in writing, on a form furnished by the department. He shall embody in that application evidence under oath, satisfactory to the board, of his possessing the qualifications preliminary to examination required by section 66-2502. He

shall pay to the department at the time of filing his application a fee as established by the board by rule. Said fee shall be commensurate with the cost of the examination and its administration and shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6). Anyone failing to pass the required examination is entitled to a second examination within six (6) months.

**History:** En. Sec. 3, Ch. 39, L. 1961; amd. Sec. 133, Ch. 147, L. 1963; amd. Sec. 1, Ch. 227, L. 1974; amd. Sec. 243, Ch. 350, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 227, and once by Ch. 350. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 227, Laws of 1974, substituted

"as established by the board by rule" at the end of the third sentence; inserted "Said fee shall be commensurate with the cost of the examination and its administration and" at the beginning of the fourth sentence; and deleted "without additional fee" at the end of the section.

Chapter 350, Laws of 1974, substituted "department" throughout the section for "board" and "secretary of the board of medical examiners"; deleted "of medical examiners" after "board" in the next-to-last sentence and added "subject to section 82A-1603(6)"<sup>2</sup>; and made minor changes in style and phraseology.

### 66-2504. Repealed.

#### Repeal

Section 66-2504 (Sec. 4, Ch. 39, L. 1961), relating to licensing of therapists before

September 30, 1961, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-2505. Applicants licensed in another state.** The board may, in its discretion, authorize the department to register as a physical therapist, without examination, on the payment of the required fee as established by the board, an applicant for license who is a physical therapist licensed under the laws of another state or territory, if the requirements for a license for physical therapist in the state or territory in which the applicant was licensed were at the date of his license substantially equal to the requirements in force in this state.

**History:** En. Sec. 5, Ch. 39, L. 1961; amd. Sec. 2, Ch. 227, L. 1974; amd. Sec. 244, Ch. 350, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 227, and once by Ch. 350. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite

section embodying the changes made by both amendments.

#### Amendments

Chapter 227, Laws of 1974, substituted "fee as established by the board" for "twenty-five dollars (\$25.00) fee."

Chapter 350, Laws of 1974, inserted "authorize the department to" near the beginning of the section before "register"; and made a minor change in style.

**66-2506. Examination of applicants—scope.** The department shall, subject to section 82A-1603, examine applicants for a license as physical therapists at times and places the board determines. The examinations shall embrace subjects the board considers necessary to determine the applicant's fitness.

**History:** En. Sec. 6, Ch. 39, L. 1961; amd. Sec. 245, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "department" at the beginning of the section



for "board"; inserted "subject to section 82A-1603" near the beginning of the section; deleted a second sentence reading "It

shall appoint two registered physical therapists to aid it in such examinations"; and made minor changes in phraseology.

**66-2507. Issuance of license—certificate as evidence.** The department shall license as a physical therapist each applicant who proves to the satisfaction of the board his fitness for a license under this act. The department shall issue to each person licensed a license certificate, which is prima facie evidence of the right of the person to whom it is issued to represent himself as a licensed physical therapist, subject to the conditions and limitations of this act.

**History:** En. Sec. 7, Ch. 39, L. 1961; amd. Sec. 246, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "de-

partment" throughout the section for references to "board"; and made minor changes in phraseology.

**66-2508. Annual renewal of license.** A licensed physical therapist shall, during January, apply to the department for a renewal of his license and pay a fee of five dollars (\$5). A license that is not renewed before April, every year, automatically lapses. The board may in its discretion revive and renew a lapsed license on the payment of all past unpaid renewal fees.

**History:** En. Sec. 8, Ch. 39, L. 1961; amd. Sec. 1, Ch. 353, L. 1969; amd. Sec. 247, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "de-

partment" in the first sentence for "board"; substituted references to renewal for references to extension; and made minor changes in phraseology.

**66-2510. Temporary licenses.** On payment to the department of a fee of ten dollars (\$10), and the submission of a written application on forms provided by it, the department shall issue without examination a temporary license to practice physical therapy in this state for a period not to exceed one (1) year to a person who meets the qualifications set forth in section 66-2502, on submission by the person of evidence satisfactory to the board that he is in this state on a temporary basis to assist in a case of medical emergency or to engage in a special physical therapy project. On the submission of a written application on forms provided by it, the department shall also issue a temporary license to a person who has applied for a license under this act and who is, in the judgment of the board, eligible to take the examination provided for in section 66-2502. This temporary license is available to an applicant only with respect to his first application for a license under section 66-2505 and the license expires when the board makes a final determination with respect to the application.

**History:** En. Sec. 10, Ch. 39, L. 1961; amd. Sec. 248, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "de-

partment" throughout the section for "board"; and made minor changes in style, punctuation and phraseology.

**66-2514. Rules adopted by board—records of proceedings and licenses.** (1) The board may adopt rules to carry this act into effect. (2)

The department shall keep a record of the board's proceedings under this act and a register of persons licensed under it. The register shall show the name of every living licensed physical therapist, his last known place of business, last known place of residence, and the date and number of his license and certificate as a licensed physical therapist.

(3) The department shall, during the month of April every year in which the renewal of licenses is required, compile a list of licensed physical therapists authorized to practice physical therapy in the state and shall mail a copy of that list to the superintendent of every known hospital and every person licensed to practice medicine and surgery in the state. An interested person in the state is entitled to obtain a copy of the list on application to the department, and payment of an amount not in excess of the cost of the list so furnished.

**History:** En. Sec. 14, Ch. 39, L. 1961; amd. Sec. 249, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment deleted "and may amend and revoke such rules at its discretion" at the end of subsection (1); sub-

stituted "department" throughout subsections (2) and (3) for "board"; inserted "and payment of an" in the last sentence of subsection (3) before "amount"; inserted the subsection designations; and made minor changes in punctuation and phraseology.

### 66-2517. Repealed.

#### Repeal

Section 66-2517 (Sec. 19, Ch. 39, L. 1961), relating to the short title of the

act, was repealed by Sec. 363, Ch. 350, Laws of 1974.

## CHAPTER 26—WATER WELL CONTRACTOR'S LICENSE ACT

### Section

- 66-2602. Purpose of the act.
- 66-2602.1. Definitions.
- 66-2602.2. Exceptions.
- 66-2604. Board—seal—compensation.
- 66-2605. Powers and duties of the board.
- 66-2606. Water well contractor's licenses.
- 66-2607. License year.
- 66-2608. Examination and qualifications.
- 66-2609. Bond to be required.
- 66-2610. Revocation and suspension.

### 66-2601. Repealed.

#### Repeal

Section 66-2601 (Sec. 16, Ch. 39, L. 1961; Sec. 1, Ch. 232, L. 1974), the title

of the "Montana Water Well Contractor's License Act," was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-2602. Purpose of the act.** (1) It is the purpose of this act to reduce and minimize the waste of ground water resources within this state by reasonable regulation and licensing of drillers or makers of water wells in this state and to protect the health and general welfare by providing a means for the development of the natural resource of underground water in an orderly, sanitary, and reasonable manner. The reasonable regulation and licensing of drillers or makers of water wells is in the best interest of the public, and the waste of ground water resources through inefficient or incompetent operations of drillers or makers of water wells is pro-

hibited. For the protection of the public and for the conservation of underground water resources, it is necessary that standards be set and maintained to ensure that competency in the drilling and making of water wells in this state is obtained.

**History:** En. Sec. 2, Ch. 176, L. 1961; amd. Sec. 2, Ch. 234, L. 1963; amd. Sec. 2, Ch. 232, L. 1974; amd. Sec. 250, Ch. 350, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 232 and once by Ch. 350. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite

section embodying the changes made by both amendments.

#### Amendments

Chapter 232, Laws of 1974, made a minor change in punctuation.

Chapter 350, Laws of 1974 made minor changes in phraseology and punctuation and deleted two paragraphs containing definitions and exceptions. See secs. 66-2602.1 and 66-2602.2.

**66-2602.1. Definitions.** Unless the context requires otherwise, in this act:

(1) "Board" means the board of water well contractors, provided for in section 82A-1602.26.

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

(3) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of groundwater. The term does not include excavations by backhoe, or otherwise, for recovery and use of surface waters or for the purpose of stock watering or irrigation where the depth is twenty-five (25) feet or less, or spring development, and the term does not include an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying or for inserting media to repressure oil or natural gas-bearing formations or for storing petroleum, natural gas, or other products.

(4) "Water well contractor" or "contractor" means a person, firm, copartnership, association, or corporation, who constructs a water well on lands other than his own, for compensation.

**History:** En. 66-2602.1 by Sec. 251, Ch. 350, L. 1974.

#### Compiler's Notes

This section is derived from the former second paragraph of section 66-2602, as amended by Sec. 2, Ch. 232, Laws of 1974.

#### Amendments

Chapter 232, Laws of 1974, inserted the phrases "or for the purpose of stock watering or irrigation" and "or spring development" in the second sentence of the definition of "water well" in subdivision (3).

**66-2602.2. Exceptions.** This act does not apply to;

(1) An individual who drills a water well on land which is owned or leased by him and is used by him for farming, ranching, or agricultural purposes or as his place of abode, and who obtains a permit from the board, which permit the board shall issue upon finding that the drilling is exempted under this paragraph; or



(2) An individual who performs labor or services for a licensed water well contractor in connection with the drilling of a water well at the direction and under the personal supervision of a licensed water well contractor.

**History:** En. 66-2602.2 by Sec. 252, Ch. 350, L. 1974.

#### Compiler's Notes

This section is derived from the former third paragraph of section 66-2602 as amended by Sec. 2, Ch. 232, Laws of 1974.

#### Amendments

Chapter 232, Laws of 1974, inserted "and who obtains a permit from the board, which permit the board shall issue upon finding that the drilling is exempted under this paragraph" in subdivision (1).

**66-2604. Board—seal—compensation.** (1) The board shall have a seal with the following words engraved thereon: "Board of Water Well Contractors." This seal shall be affixed to writs, authentication of records, and other official proceedings of the board. The courts of this state shall take judicial notice of the seal.

(2) [The board may employ such] persons as may be necessary to perform the duties of the board, either upon a part-time basis or upon a full-time basis. [Each] appointed member of the board who is not a state employee shall receive, as compensation for his services, twenty dollars (\$20) per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the places at which he shall perform such duties, together with mileage and per diem expenses as provided by law. Employees of the state of Montana who are members of the board shall receive no extra compensation for their services as members of the board.

**History:** En. Sec. 4, Ch. 176, L. 1961; amd. Sec. 152, Ch. 147, L. 1963; amd. Sec. 1, Ch. 278, L. 1969; amd. Sec. 25, Ch. 100, L. 1973; amd. Sec. 253, Ch. 350, L. 1974.

#### Compiler's Notes

The compiler substituted the bracketed words "The board may employ such" at the beginning of the first sentence of subsection (2) for "Each" and inserted the bracketed word "Each" at the beginning of the second sentence of subsection (2); to correct apparent errors in the wording of the 1974 amendment by Chapter 350.

#### Amendments

The 1973 amendment deleted "section 1, article XIX, of" before "the constitution" in former subsection (3).

The 1974 amendment deleted the former first three subsections relating to the water well contractor's examining board, its composition, and oath of office; substituted "Board of Water Well Contractors" in subsection (1) for "Water Well Contractor's Examining Board"; substituted "Employees of the state of Montana who are members of the board" in the last sentence for "The state engineer and the director of environmental sanitation of the state board of health of the state of Montana"; and made minor changes in phraseology.

**66-2605. Powers and duties of the board.** (1) The board may exercise the authority granted to it by this act.

(2) The board shall adopt rules and orders to effectuate this act.

(3) The board may request the department to inspect water wells drilled, or being drilled, and the department has access to these at reasonable times.

(4) The board may, subject to sections 82A-1603 and 82A-1604, establish a program for training water well drillers or prospective water well drillers and apprentices, to more effectively carry out this act.

(5) The rules of the board shall be compiled in printed form for distribution to interested persons, for which the department may charge a fee. Sums realized from these sales shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

(6) The board shall authorize the department to issue licenses to qualified water well contractors in this state; cause examinations to be made of applicants for licenses; revoke or suspend licenses for good cause, after notice and opportunity to be heard; reinstate licenses previously revoked when justification is shown to the satisfaction of the board; and, generally, perform duties which will carry out this act.

**History:** En. Sec. 5, Ch. 176, L. 1961; amd. Sec. 153, Ch. 147, L. 1963; amd. Sec. 3, Ch. 234, L. 1963; amd. Sec. 254, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment deleted "or its authorized representative" in subsection (3) after "board"; substituted "may request the department to inspect" in subsection (3) for "shall have the power and authority to inspect"; substituted "the department has access" in subsection (3) for "shall have access"; inserted "subject to

sections 82A-1603 and 82A-1604" in subsection (4); deleted the first three sentences of subsection (5) relating to a public hearing (see parent volume); substituted "department" in subsection (5) for "board"; deleted "with the treasurer of the state" in subsection (5) after "deposited"; added "subject to section 82A-1603(6)" to the end of subsection (5); substituted "board shall authorize the department" in subsection (6) for "board has authority, and it is its duty"; and made minor changes in punctuation and phraseology.

**66-2606. Water well contractor's licenses.** (1) A person desiring to engage in the drilling, making, or construction of one (1) or more wells for underground water in this state shall first file an application with the department for a contractor's license, setting out his qualifications, the equipment proposed to be used in the contracting, and other matters required by the board, on forms adopted by the board. The department shall charge a fee of one hundred dollars (\$100) for filing the application of a person. The application shall not be acted on until the fee has been paid. Fees collected under this section shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6). A license to construct water wells shall be issued to an applicant if, in the opinion of the board, the applicant is qualified to conduct water well construction operations. In the granting of licenses, the board shall have due regard for the interest of this state in the protection of its underground waters.

(2) A temporary water well contractor's license may be issued to a person who, by evidence satisfactory to the board, is found to possess the qualifications numbered (a) through (f) in section 66-2608(1) and who has applied for a license under this act. The temporary license entitles the holder to engage in the business of drilling, making, or constructing water wells until the time of the next examination given under section 66-2608. On the applicant's successfully meeting the board's requirements on examination, the temporary license shall be returned to the department and a regular license issued. If the holder of a temporary license fails, after notice of the holding of an examination, to submit himself for examination or to meet the board's requirements, the temporary license expires and shall be returned to the department for cancellation.



**History:** En. Sec. 6, Ch. 176, L. 1961; amd. Sec. 154, Ch. 147, L. 1963; amd. Sec. 4, Ch. 234, L. 1963; amd. Sec. 255, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "department" throughout the section for "board"; deleted "with the state treasurer" in the fourth sentence of subsection (1) after "deposited"; deleted "water well contractor's examining" in the fourth sentence of subsection (1) before "board"; added

"subject to section 82A-1603(6)" at the end of the fourth sentence of subsection (1); deleted two sentences from the end of subsection (1) relating to license applicants already engaged in well drilling and construction for three years prior to the act (see parent volume); substituted "under section 66-2608" at the end of the second sentence of subsection (2) for "by the board"; inserted the subsection designations; and made minor changes in style, punctuation and phraseology.

**66-2607. License year.** The term for licenses issued under this act is from July 1 of each year through the following June 30. After the payment of the initial fee under section 66-2606 a licensee shall pay, before the first day of each license year, a renewal fee of twenty-five dollars (\$25). If a licensee does not apply for renewal of his license before the first day of a license year, and remit to the department the renewal fee, he shall have his license suspended by the board; and, if the license remains suspended for a period of more than thirty (30) days after the first day of a license year, it shall be revoked by the board. However, the department, prior to this revocation, shall notify the licensee of the board's intention to revoke at least ten (10) days prior to the time set for action to be taken by the board on the license, by mailing notice to the licensee at the address appearing for the licensee in the records and files of the department. A license, once revoked, may not be reinstated unless it appears that an injustice has occurred indicating to the board that the licensee was not guilty of negligence or laches. A person whose license has been revoked, through his own fault, if he desires to engage in the business of water well drilling in this state, or contracting therefor, must apply under section 66-2606. Notice of suspension shall be given a licensee when the suspension occurs.

**History:** En. Sec. 7, Ch. 176, L. 1961; amd. Sec. 256, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "before the first" in the second sentence for "on or before the first"; substituted "department" throughout the section for "board"; deleted "through United States mail, postage

prepaid" at the end of the fourth sentence; deleted "through error or omission, or other fact or circumstance" in the fifth sentence before "indicating"; deleted "and the 'without examination' proviso contained therein shall not apply to him" at the end of the next-to-last sentence; and made minor changes in style, punctuation and phraseology.

**66-2608. Examination and qualifications.** (1) Under rules pertaining to the business of drilling and contracting for drilling of water wells which the board adopts, the department shall, subject to section 82A-1603(4), inquire by examination or otherwise, into the qualifications of applicants for licenses to drill or make wells for the production of underground waters in this state. Examinations may be oral, written, or both. The qualifications required by the board are: (a) familiar knowledge of ground water laws of this state and sanitary standards for water well drilling and construction of water wells; (b) knowledge of types of water well construction; (c) knowledge of types of drilling tools and their uses;



(d) knowledge of underground geology in its relation to well construction; (e) possession of adequate equipment by the applicant to complete satisfactory water wells under the standards of the board; (f) financial responsibility of the applicant; (g) successful completion of an examination given by the department; (h) the applicant must have completed a minimum of one (1) year apprenticeship under the direct supervision of a licensed water well contractor.

(2) The department shall give examinations at times and places the board determines. Failure of an applicant to successfully complete the examination disqualifies him from making further application for a period of six (6) months. The board shall act within a reasonable time on applications for licenses. An application shall be accompanied by the initial fee, and failure to successfully meet the requirements of the board does not entitle the applicant to a refund of the fee.

**History:** En. Sec. 8, Ch. 176, L. 1961; amd. Sec. 4, Ch. 232, L. 1974; amd. Sec. 257, Ch. 350, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 232 and once by Ch. 350. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 232, Laws of 1974, inserted the provision contained in item (h) in subsection (1) that an applicant for a license must have completed a minimum of one year apprenticeship under the supervision of a licensed water well contractor.

Chapter 350, Laws of 1974, inserted the numerical subsection designations at the beginning of the paragraphs; revised the section to provide that the department instead of the board shall inquire into qualifications of applicants and give examinations; and made minor changes in phraseology and punctuation.

**66-2609. Bond to be required.** The department, on issuance of a license under this act shall, before the person commences operations in this state require a good and sufficient surety bond, to be approved by the board, in the penal sum of one thousand dollars (\$1,000), conditioned that the licensee will comply with the rules of the board and reasonable requirements made by the board in connection with the drilling of an individual well.

**History:** En. Sec. 9, Ch. 176, L. 1961; amd. Sec. 5, Ch. 232, L. 1974; amd. Sec. 258, Ch. 350, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 196 and once by Ch. 218. Neither amendatory act mentioned the

other; the amendment by Ch. 232 made no change in the text of the section.

#### Amendments

Chapter 232, Laws of 1974, made no change in the text of the section.

Chapter 350, Laws of 1974, substituted "The department" for "The board" at the beginning of the section and made minor changes in phraseology and punctuation.

**66-2610. Revocation and suspension.** (1) A license issued under this act may be suspended or revoked by the board, in cases other than failure of a licensee to renew the license, after notice and hearing, in the event the licensee has violated a condition of the bond maintained by him as a prerequisite to issuance of the license, for the practice of fraud or deceit in obtaining a license, for gross negligence, incompetence, conviction of a felony, or violating the requirements of this act. Any person may make

complaint against a licensee. Complaints shall be in writing, signed by the complainant, and must specify the charges against the licensee. The board, on its own motion, or on receipt of a complaint, shall hold a hearing on charges.

(2) A person bringing the complaint has the burden of proof and must appear in person. A unanimous vote of the board is required in order to revoke or suspend a license. If a suspension is directed by the board, it may not be for a period in excess of one (1) year.

**History:** En. Sec. 10, Ch. 176, L. 1961; amd. Sec. 259, Ch. 350, L. 1974.

of subsection (1); deleted material at the beginning of subsection (2) relating to hearing and notice requirements and procedure (see parent volume); inserted the subsection designations; and made minor changes in punctuation and phraseology.

#### **Amendments**

The 1974 amendment inserted "or on receipt of a complaint" in the last sentence

### **66-2611. Repealed.**

#### **Repeal**

Section 66-2611 (Sec. 11, Ch. 176, L. 1961), relating to appeals from deci-

sions, was repealed by Sec. 363, Ch. 350, Laws of 1974.

### **66-2614. Repealed.**

#### **Repeal**

Section 66-2614 (Sec. 14, Ch. 176, L. 1961), relating to repeal clause and con-

struction of act, was repealed by Sec. 363, Ch. 350, Laws of 1974.

## **CHAPTER 27—MORTICIANS AND FUNERAL DIRECTORS**

#### **Section**

- 66-2701. Definitions.
- 66-2702. [Transferred.]
- 66-2703. Officers of board—compensation of members.
- 66-2706. Disposition of fees.
- 66-2707. Funeral directing.
- 66-2708. Embalming and mortuary science—qualifications for mortician's license.
- 66-2709. Examination for morticians.
- 66-2711. Mortician's license—fee and renewal.
- 66-2715. Hearing and notice—revocation and suspension of licenses.

**66-2701. Definitions.** Unless the context requires otherwise, in this act:

- (1) "Board" means the board of morticians, provided for in section 82A-1602.16.
- (2) "Funeral directing" includes
  - (a) Supervising funerals,
  - (b) Preparing dead bodies for burial other than by embalming,
  - (c) Maintaining a mortuary for the preparation, disposition, or care of dead human bodies, and
  - (d) The holding out to the public that one is a funeral director or undertaker.
- (3) "Embalming" means the preservation and disinfection of the dead human body by application of chemicals externally, internally, or both.
- (4) "Mortuary science" is the profession or practice of funeral directing and embalming.

(5) A "mortician" is a person licensed under this act to practice mortuary science.

(6) A "mortuary" is a place of business used for the care and preparation for burial or transportation of dead human bodies, or a place where a person represents himself as engaged in the profession of mortuary science or funeral directing.

(7) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

**History:** En. Sec. 1, Ch. 41, L. 1963; definition of "board" in subdivision (1) amd. Sec. 260, Ch. 350, L. 1974. for "the state board of morticians"; added subdivision (7); and made minor changes in punctuation and phraseology.

#### Amendments

The 1974 amendment substituted the

### 66-2702. [Transferred.]

#### Compiler's Notes

Section 261, Ch. 350, Laws of 1974 renumbered this section as sec. 82A-1602.16.

**66-2703. Officers of board—compensation of members.** The board shall elect a chairman, secretary-treasurer, and other necessary officers. Board members shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in attending meetings or in the discharge of other board duties.

**History:** En. Sec. 3, Ch. 41, L. 1963; tion to such reimbursement the secretary-treasurer may be paid a salary set by the board" at the end of the section; and made amd. Sec. 262, Ch. 350, L. 1974. minor changes in phraseology.

#### Amendments

The 1974 amendment deleted "In addi-

### 66-2705. Repealed.

#### Repeal

Section 66-2705 (Sec. 5, Ch. 41, L. 1963), repealed by Sec. 363, Ch. 350, Laws of 1974. relating to employees of the board, was

**66-2706. Disposition of fees.** Money collected by the department under this act shall be deposited for the use of the board, subject to section 82A-1603(6).

**History:** En. Sec. 6, Ch. 41, L. 1963; present section for one reading "All moneys collected by the board shall be deposited within the state treasury and shall be used amd. Sec. 263, Ch. 350, L. 1974. only for the purpose of defraying the necessary expenses of administering this act."

#### Amendments

The 1974 amendment substituted the

**66-2707. Funeral directing.** The practice of funeral directing is prohibited by anyone who does not hold a funeral director's license or a mortician's license issued by the department. A person licensed to practice funeral directing on June 1, 1963 is entitled to an annual renewal of his license on payment of an annual license fee to the department on July 1 of each year. The amount of the annual license fee shall be set by the board but may not exceed five dollars (\$5). A funeral director's license may not be issued to a person who is not licensed by the board of embalmers and funeral directors to practice funeral directing on June 1, 1963.



**History:** En. Sec. 7, Ch. 41, L. 1963; amd. Sec. 264, Ch. 350, L. 1974.

**Amendments**  
The 1974 amendment substituted "de-

partment" for "board" in the first two sentences; and made a minor change in phraseology.

**66-2708. Embalming and mortuary science—qualifications for mortician's license.** The practice of embalming or mortuary science is prohibited by anyone who does not hold a mortician's license issued by the department. To qualify for a mortician's license a person must:

- (1) Be of good moral character.
- (2) Have graduated from an accredited college of mortuary science, and have satisfactorily completed two (2) academic years at an accredited college or university.
- (3) Pass an examination prescribed by the board.
- (4) Serve a one (1) year internship under the supervision of a mortician in a licensed mortuary in Montana.

**History:** En. Sec. 8, Ch. 41, L. 1963; amd. Sec. 9, Ch. 168, L. 1971; amd. Sec. 265, Ch. 350, L. 1974.

#### Amendments

The 1971 amendment deleted a former subdivision (1) reading "Be at least twenty-one (21) years of age"; and redesignated former subdivisions (2) to (5),

inclusive, as subdivisions (1) to (4), inclusive.

The 1974 amendment substituted "department" for "board" in the first sentence; deleted "This subsection shall not apply to a person who is enrolled in an accredited college of mortuary science on the effective date of this act" at the end of subdivision (2); and made minor changes in punctuation.

**66-2709. Examination for morticians.** A person possessing the necessary qualifications may apply to the department for a license and on payment of an application fee of twenty-five dollars (\$25), may take the examination prescribed by the board. The examination shall be held on the second Wednesday of July each year in Helena and at such other times and places as the board considers necessary.

**History:** En. Sec. 9, Ch. 41, L. 1963; amd. Sec. 266, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "board" in the first sentence; and made minor changes in style and phraseology.

**66-2711. Mortician's license—fee and renewal.** (1) The annual license fee for a mortician's license must be postmarked before July 1 of the assessment year. The amount of the annual license fee shall be set by the board but may not exceed ten dollars (\$10). A person holding a license issued by the board of embalmers and funeral directors to practice embalming on June 1, 1963 may, within two (2) years of this date, apply for and receive a mortician's license on payment of the license fee.

(2) Failure to pay the annual license fee results in automatic suspension of the license. The license may be reinstated by the payment of unpaid license fees plus a penalty of twenty-five dollars (\$25).

**History:** En. Sec. 11, Ch. 41, L. 1963; amd. Sec. 267, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment deleted "in the

hands of the secretary-treasurer or" in the first sentence of subsection (1) before "postmarked"; and made minor changes in style and phraseology.

**66-2715. Hearing and notice—revocation and suspension of licenses.** No action to suspend, revoke, or cancel a license may be taken by the board until the accused has been given notice and a hearing on the charges. If, at the hearing, the board finds the charges true, it may revoke or suspend the license of the accused person.

**History:** En. Sec. 15, Ch. 41, L. 1963; amd. Sec. 268, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment deleted a clause in the first sentence providing for notice at

least thirty days prior to the hearing; deleted two final sentences relating to records of the proceedings and copies of transcripts; and made minor changes in phraseology. For prior version, see parent volume.

**66-2716. Repealed.**

**Repeal**

Section 66-2716 (Sec. 16, Ch. 41, L. 1963), relating to appeals from board deci-

sions, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**CHAPTER 28—ELECTRICAL SAFETY LAW**

**Section**

66-2802. **Purpose.**

66-2803. **Definitions.**

66-2804. [Transferred.]

66-2805. **Meetings—powers—compensation.**

66-2805.1. **Department—inspections—tags.**

66-2806. **Electrician must have license.**

66-2807. **License requirements.**

66-2809. **License to nonresidents—reciprocity.**

66-2810. **Temporary permits.**

66-2811. **License without written examination.**

66-2812. **Exemptions.**

66-2814. **Fees.**

66-2815. **Examination fees.**

66-2817. **Apprentices—rules—record kept by department.**

66-2819. **Disposition of fees.**

**66-2801. Repealed.**

**Repeal**

Section 66-2801 (Sec. 1, Ch. 148, L. 1965), relating to the short title of the

act, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-2802. Purpose.** (1) The purpose of this act is to protect the health and safety of the people of this state from the danger of electrically caused shocks, fires, and explosions; to protect property from the hazard of electrically caused fires and explosions; to establish a procedure for determining where and by whom electrical installations are to be made; to assure the public that persons making electrical installations are qualified; and to ensure that the electrical installations and electrical products made and sold in this state meet minimum safety standards. All installations in this state of wires and equipment to convey electric current and installations of apparatus to be operated by current, except as provided in section 66-2812, shall be made substantially in accord with the National Electrical Code, as approved by the American standards association, relating to this work as far as it covers fire and personal injury hazards, and as the National Electrical Code shall be amended. The standards as set forth in the National

Electrical Code shall be prima facie evidence of minimum approved methods of construction for safety to life and property. The affirmative vote of a majority of all appointed members of the board shall be required to set any standards that are more stringent than those set forth in the National Electrical Code.

(2) Rules and standards relating to buildings and equipment covered by the state or a municipal building code are not effective until approved by the department of administration and filed with the secretary of state.

**History:** En. Sec. 2, Ch. 148, L. 1965; amd. Sec. 19, Ch. 366, L. 1969; amd. Sec. 1, Ch. 425, L. 1973; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 269, Ch. 350, L. 1974.

#### Amendments

The 1973 amendment added the last two sentences to subsection (1).

The 1974 amendment inserted the reference to section 66-2812 in the second sen-

tence of subsection (1); deleted "of electricians" in the last sentence of subsection (1) after "board"; substituted "department of administration" in subsection (2) for "state building code council"; and made minor changes in punctuation and phraseology. Section 12, Ch. 226, Laws of 1974, also directed the substitution of "department of administration" in subsection (2) for "state building code council."

**66-2803. Definitions.** Unless the context requires otherwise, in this act: (1) "Master electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and supervise the installation and repair of wiring apparatus and equipment for electric light, heat, power, and other purposes under the rules governing this work.

(2) "Journeyman electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes, under the rules governing this work.

(3) "Electrical contractor" means a person, firm, copartnership, corporation, association, or combination of these, who undertakes or offers to undertake for another the planning, laying out, supervising, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power. A registered electrical engineer who plans or designs electrical installations is not an electrical contractor.

(4) "Board" means the state electrical board, provided for in section 82A-1602.10.

(5) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

**History:** En. Sec. 3, Ch. 148, L. 1965; amd. Sec. 270, Ch. 350, L. 1974.

subdivisions; added subdivisions (4) and (5); and made minor changes in punctuation and phraseology.

#### Amendments

The 1974 amendment redesignated the

### 66-2804. [Transferred.]

#### Compiler's Notes

Section 271, Ch. 350, Laws of 1974 renumbered this section as sec. 82A-1602.10.

**66-2805. Meetings—powers—compensation.** (1) The board shall annually in the month of July, elect from its membership a president, vice-



light, heat, and power. Applications for license and notice to the applicant shall be made and given as in the case of master electricians' licenses.

(b) The written examination for a journeyman's license shall consist of at least thirty (30) questions designed to fairly test the applicant's knowledge and the technical application thereof in the following subjects:

- (i) The Ohms law;
- (ii) The National Electrical Code;
- (iii) Layout and practical installation of electrical circuits.

(3) To ensure impartiality, the examination for either license shall be by numbers drawn by lot. A paper may not be marked with the name of an applicant but shall be anonymously graded by the department, subject to section 82A-1603. The examination passing grade is seventy-five per cent (75%). If it is determined that the applicant has passed the examination, the department, on payment by the applicant of the fee, shall issue to the applicant a license which authorizes him to engage in the business, trade, or calling of a journeyman electrician or master electrician. Each original license expires on July 15 which is at least one (1) year but not more than two (2) years subsequent to the date of issuance.

(4) Licenses of journeyman electricians or master electricians, unless they have been suspended or revoked by the board, shall be renewed for a period of one (1) year by the department on application for renewal made to the department prior to July 15 of the year in which the prior license expired and on the payment of an annual renewal fee. If application for renewal is not made prior to July 15, an additional fee of five dollars (\$5) shall be paid on account of the delinquency in renewal. All applications for renewal must be made prior to August 15 of that year, otherwise the license is forfeited, and the applicant is required to pass the examination and pay the fees required of applicants for original licenses.

**History:** En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment inserted "(1) Master electrician's license"; inserted "by the board" in the second sentence of subdivision (1)(a); substituted "department" throughout the section for "state electrical board" and "board," and in the fourth sentence of subsection (3) for "secretary"; inserted "authorize the department to" in

the third sentence of subdivision (1)(a); inserted "(2) Journeyman electrician's license"; redesignated former subdivisions (c) and (d) as subdivisions (2)(a) and (2)(b); redesignated former subdivisions (e) and (f) as subsections (3) and (4); inserted "for either license" near the beginning of subsection (3); added "subject to section 82A-1603" at the end of the second sentence of subsection (3); and made minor changes in punctuation and phraseology.

**66-2809. License to nonresidents—reciprocity.** To the extent that other states, which provide for the licensing of electricians, provide for similar action, the board may grant licenses to electricians licensed by other states, on payment by the applicant of the required fee and on furnishing proof to the board that the applicant has qualifications at least equal to those provided herein for applicants for written examinations. Applicants who qualify for a license under this section are not required to take a written examination.

**History:** En. Sec. 9, Ch. 148, L. 1965; amd. Sec. 276, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment deleted "state electrical" before "board"; and made minor changes in punctuation and phraseology.

**66-2810. Temporary permits.** The board may authorize the department to issue temporary permits to engage in the work of a master electrician or journeyman electrician to an applicant who furnishes evidence satisfactory to the board that he has the required experience to qualify for the examination and who pays the fee. Temporary permits continue in effect only until the next examination is given and may be revoked by the board at any time. If the applicant is granted a license, a fee paid for the temporary permit shall be applied to the fee required for a license.

**History:** En. Sec. 10, Ch. 148, L. 1965; amd. Sec. 277, Ch. 350, L. 1974.

trical" before "board" at the beginning of the section; inserted "authorize the department to" near the beginning of the section; and made minor changes in phraseology.

#### Amendments

The 1974 amendment deleted "state elec-

**66-2811. License without written examination.** The board may authorize the department to issue a license as a master electrician or journeyman electrician to an applicant without written examination on satisfactory proof that the applicant has the qualifications to apply for a license under this act and is the holder of a valid license issued by a city or other political subdivision of this state which provides for the examination and licensing of electricians.

**History:** En. Sec. 11, Ch. 148, L. 1965; amd. Sec. 278, Ch. 350, L. 1974.

trical" before "board" at the beginning of the section; inserted "authorize the department to" near the beginning of the section; and made minor changes in phraseology.

#### Amendments

The 1974 amendment deleted "state elec-

**66-2812. Exemptions.** (a) Nothing in this act shall be deemed to apply to the installation, alteration or repair of electrical signal or communications equipment owned or operated by a public utility or a city. The licensing or inspection provisions of this act shall not apply to persons making electrical installations on their own property or to regularly employed maintenance electricians working on the premises of their employer or to regularly employed maintenance electricians.

(b) Nothing in the article shall be construed to require any individual to hold a license before doing electrical work on his own property or residence, provided that said property or residence is maintained for his own use.

(c) to (f). \* \* \* [Same as parent volume.]

**History:** En. Sec. 12, Ch. 148, L. 1965; amd. Sec. 1, Ch. 423, L. 1973.

electrical wiring, circuits, apparatus and equipment by or for such public utility, or comprising a part of its plants, lines or system" at the end of the first sentence in subsection (a); inserted "or inspection" near the beginning of the second sentence in subsection (a); inserted "or to regularly employed maintenance electricians" at the end of the second sentence in subsection (a); and inserted "or residence, provided that said property or residence is maintained for his own use" at the end of subsection (b).

#### Amendments

The 1973 amendment substituted "alteration or repair of electrical signal or communications equipment owned or operated by public utility or city" for "maintenance of communication circuits, wires and apparatus" in the first sentence of subsection (a); deleted "nor to any electrical public utility, or its employees, in the installation and maintenance of

**66-2813. Repealed.****Repeal**

Section 66-2813 (Sec. 13, Ch. 148, L. 1965), relating to appeals from board deci-

sions, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-2814. Fees.** Each electrical contractor shall, before July 1 of each year, file with the department an application in writing for each firm operated by him in this state to obtain a license. A license may not be issued until the applicant meets the requirements and has paid to the department a license fee of seventy-five dollars (\$75) for each firm operated by him. Licenses shall bear the date of issue and expire on July 1 following the date of issue. An electrical contractor licensed under this act is entitled to have his license renewed for the ensuing year by payment to the department of a fee of seventy-five dollars (\$75) before the date of expiration of the license.

**History:** En. Sec. 14, Ch. 148, L. 1965; amd. Sec. 279, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "before" in the first and last sentences for

"on or before"; substituted "department" throughout the section for "state electrical board"; deleted "upon the expiration of his license" in the last sentence after "ensuing year"; and made minor changes in phraseology.

**66-2815. Examination fees.** Master electricians who are not electrical contractors and journeyman electricians installing or intending to install for hire electric wiring or equipment to convey electric current, or apparatus to be operated by this current, shall make application for a license to the department. The application shall be on a form furnished by the department and accompanied by an examination fee of ten dollars (\$10). The forms shall state the applicant's full name, his address, the extent of his experience, and other information required by the board. If the applicant has complied with the rules adopted by the board and, being qualified, has successfully completed the examination, he shall pay to the department an annual license fee of: twenty-five dollars (\$25) for a master electrician's license; or ten dollars (\$10) for a journeyman electrician's license, and upon receipt of either fee, the department shall issue the proper license to the applicant. A person serving a four (4) year electrician apprenticeship under the supervision of a licensed electrician is exempt from the licensing provision of this section during training. Credit for the time spent in an electrical school shall be given to the master electrician, journeyman electrician, or apprentice, up to a total of two (2) years on the four (4) year requirement.

**History:** En. Sec. 15, Ch. 148, L. 1965; amd. Sec. 280, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment deleted "within sixty (60) days after the first day of July, 1965" near the end of the first sentence; substituted "department" throughout the section for "state electrical board" and "board"; substituted "board" at the end

of the third sentence and near the beginning of the fourth sentence for "state electrical board"; substituted "receipt of either fee" near the end of the fourth sentence for "receipt thereof"; deleted "for the time spent in said classes" in the last sentence after "apprentice"; and made minor changes in style, punctuation and phraseology.



# **66-2816. Repealed.**

## **Repeal**

Section 66-2816 (Sec. 16, Ch. 148, L. 1965; Sec. 1, Ch. 199, L. 1967), relating to

licensing of persons qualified as of July 1, 1965, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-2817. Apprentices—rules—record kept by department.** This act does not prohibit a person from working as an apprentice in the trade of electrician with an electrician licensed under this act, and under rules made by the [board]. The name and residence of each apprentice, and the names and residences of their employers, shall be filed with the department, and a record shall be kept by the department, showing the names and residences of these apprentices.

**History:** En. Sec. 17, Ch. 148, L. 1965; amd. Sec. 281, Ch. 350, L. 1974.

## **Compiler's Notes**

The bracketed word "board" has been inserted by the compiler to correct an apparent error.

## **Amendments**

The 1974 amendment substituted "li-

censed under this act" in the first sentence for "licensed by said board as herein provided for"; deleted "state electrical" at the end of the first sentence before "[board]"; substituted "department" in two places in the second sentence for "board"; and made minor changes in punctuation and phraseology.

**66-2819. Disposition of fees.** Money collected by the department under this act shall be deposited in the earmarked revenue fund, for the use of the board, subject to section 82A-1603(6).

**History:** En. Sec. 19, Ch. 148, L. 1965; amd. Sec. 282, Ch. 350, L. 1974.

## **Amendments**

The 1974 amendment rewrote this section. For prior version, see parent volume.

## **CHAPTER 29—MASSEURS—REGULATION AND LICENSING**

### **Section**

- 66-2902. Definitions.
- 66-2903. [Transferred.]
- 66-2904. Organization of board—meetings—powers and duties.
- 66-2905. Practicing without a license—license without examination.
- 66-2906. Application and fees for license.
- 66-2907. Examinations.
- 66-2908. Denial, suspension, or revocation of license.
- 66-2909. Renewal of license.
- 66-2910. Disposition of fees—receipts and disbursements.
- 66-2914. Exemptions.

**66-2902. Definitions.** Unless the context requires otherwise, in this act:

- (1) "Masseur" includes persons engaged in the occupation of massage and includes the feminine "masseuse."
- (2) "Massage" means the trained ability of body massage by hands for the purpose of body massage, the use of oil rubs, salt glows, hot and cold packs, tub, shower or cabinet baths; and the application to the patron by the operator's hands by variations of touch, stroking, friction, kneading, vibration, percussion, and gymnastics.
- (3) "Practice of massage" means to perform massage as above defined, for remuneration or hire, or to advertise, by the use of the word massage

in any of its derivations or genders, or by any other means, the practice of massage.

(4) "Massage establishment" means a place in which any of the above procedures and methods are administered or used.

(5) "Board" means the board of massage therapists, provided for in section 82A-1602.14.

(6) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

**History:** En. Sec. 2, Ch. 302, L. 1967; amd. Sec. 1, Ch. 321, L. 1974; amd. Sec. 283, Ch. 350, L. 1974.

#### Amendments

Chapter 321, Laws of 1974, inserted the preliminary clause; inserted subsection (3); substituted "board of masseurs" in subsection (5) for "Montana board of massage examiners"; and made minor changes in style, punctuation and phraseology.

Chapter 350, Laws of 1974, inserted the preliminary clause; substituted "board of massage therapists, provided for in section 82A-1602.14" in subsection (5) for "Montana board of massage examiners"; added subsection (6); and made minor changes in style, punctuation and phraseology.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 321 and once by Ch. 350. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

### 66-2903. [Transferred.]

#### Compiler's Notes

Section 284, Ch. 350, Laws of 1974 renumbered this section as sec. 82A-1602.14.

**66-2904. Organization of board—meetings—powers and duties.** (1) The board shall annually elect a president, vice-president, and secretary-treasurer from its membership.

(2) The board shall hold one (1) regular meeting each year, at the city of Helena, Montana, and shall hold special meetings at times and places a majority of the board designates; however, not more than four (4) meetings may be held in any one (1) year. A majority of the board constitutes a quorum.

(3) The board may administer oaths, take affidavits, summon witnesses, and take testimony as to matters within the scope of the power of the board. It shall adopt a seal, which shall be affixed to licenses issued, and may adopt rules it considers proper and necessary for the performance of its duties, and shall adopt a schedule of minimum educational requirements, not inconsistent with this law, which shall be without prejudice, partiality, or discrimination as to the different approved schools of massage training. The department shall keep a record of the proceedings of the board, which shall at all times be open to public inspection.

**History:** En. Sec. 4, Ch. 302, L. 1967; amd. Sec. 1, Ch. 243, L. 1973; amd. Sec. 2, Ch. 321, L. 1974; amd. Sec. 285, Ch. 350, L. 1974.

the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 321 and once by Ch. 350. Neither amendatory act mentioned or entirely incorporated the changes made by

#### Amendments

The 1973 amendment deleted "within thirty (30) days" following "shall convene" in the first paragraph; substituted "each appointment" for "their appoint-

ment" in the first paragraph; deleted "and thereafter annually elect," following "elect" in the first paragraph; deleted "on the second Friday of January" following "regular meeting" in the second paragraph; and made minor changes in phraseology.

Chapter 321, Laws of 1974, inserted "approved" in the next-to-last sentence of subsection (3) before "schools."

Chapter 350, Laws of 1974, inserted the subsection designations; deleted "of massage examiners" after "board" at the beginning of subsection (1); deleted "convene within thirty (30) days after their

appointment and elect, and thereafter" in subsection (1) before "annually"; deleted "on the second Friday of January in" in the first sentence of subsection (2) before "each year"; inserted "power of the" at the end of the first sentence of subsection (3); substituted "may" for "shall" in the second sentence of subsection (3) before "adopt rules"; substituted "department" for "secretary of said board" in the last sentence of subsection (3); deleted a final paragraph relating to issuing a masseur's license to board members (see parent volume); and made minor changes in style, punctuation and phraseology.

### **66-2905. Practicing without a license—license without examination. (1)**

It is unlawful for a person to practice the occupation of massage in any of its arts and sciences in this state without first obtaining a license under this act.

(2) When application for examination for license is filed with the department the board may authorize the department to issue to the applicant a temporary permit to engage in the occupation of massage, which is good until the next meeting of the board.

**History:** En. Sec. 5, Ch. 302, L. 1967; amd. Sec. 3, Ch. 321, L. 1974; amd. Sec. 286, Ch. 350, L. 1974.

#### **Compiler's Notes**

This section was amended twice in 1974, once by Ch. 321 and once by Ch. 350. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### **Amendments**

Chapter 321, Laws of 1974, inserted "in any of its arts and sciences" in subsection (1); and made a minor change in phraseology.

Chapter 350, Laws of 1974, inserted the subsection designations; deleted a second sentence in subsection (1) which provided for licensing without examination for persons already in practice (see parent volume); substituted the first reference to "department" in subsection (2) for "board"; inserted "authorize the department to" in subsection (2); and made minor changes in phraseology.

**66-2906. Application and fees for license. (1)** A person wishing to engage in the occupation of a masseur in this state shall make application to the department on the form and in the manner prescribed by the board, at least fifteen (15) days prior to a meeting of the board. Each applicant shall hold a diploma or credentials issued by a recognized, approved school of massage, certifying not less than one thousand (1,000) hours of study satisfactory to the school. Application shall be in writing and sworn to by some officer authorized to administer oaths, and shall recite the history of the applicant's educational qualifications, how long he has studied massage, from what school he holds a certificate, and the length of time he has engaged in the occupation of massage, accompanying this with proof by a diploma or certificate and with satisfactory evidence of good character and reputation.

(2) There shall be paid to the department, by an applicant for a license, a fee of thirty-five dollars (\$35) which shall accompany the application. An applicant failing to pass the requirements is entitled within six (6) months to a re-examination on payment of an additional fee of ten



dollars (\$10), but on a third failure may not reapply for a period of one year.

**History:** En. Sec. 6, Ch. 302, L. 1967; amd. Sec. 4, Ch. 321, L. 1974; amd. Sec. 287, Ch. 350, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 321 and once by Ch. 350. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 350, Laws of 1974, substituted "board" for "board of massage examiners" in the first sentence of subsection (1) after "application to" and in the first sen-

tence of subsection (2) before "by an applicant"; deleted "or like institution" in the second sentence of subsection (1) after "massage"; inserted "for a period of one (1) year" at the end of subsection (2); and made minor changes in phraseology.

Chapter 350, Laws of 1974, inserted the subsection designations; deleted "after August 1, 1967, except those licensed under section 66-2905" in the first sentence of subsection (1) after "state"; substituted "department" in both subsections for "board of massage examiners" and "secretary-treasurer of the state board of massage examiners"; deleted "through the secretary-treasurer thereof" in subsection (1) after "department"; and made minor changes in punctuation and phraseology.

**66-2907. Examinations.** (1) Examinations for licenses to engage in the occupation of massage shall be made by the department, subject to section 82A-1603, and according to the method considered by the board to be the most practicable and expeditious to test the applicant's qualifications.

(2) Examinations shall be in writing, and in addition each applicant shall pass a reasonable demonstrative and oral examination. Minimum requirements are a general average in the examination of seventy-five per cent (75%) in all subjects and not less than fifty per cent (50%) in any one (1) subject. In addition to the subjects as may be designated by the board, the examination shall include principles of sanitation and hygiene.

**History:** En. Sec. 7, Ch. 302, L. 1967; amd. Sec. 288, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment inserted the subsection designations; substituted "department" in subsection (1) for "board"; in-

serted "subject to section 82A-1603" in subsection (1); deleted "conducted by and under the supervision and direction of said board" at the end of the first sentence of subsection (2); and made minor changes in punctuation and phraseology.

**66-2908. Denial, suspension, or revocation of license.** The board may, after hearing, deny, suspend, revoke or refuse to renew a license under this act to a person, otherwise qualified, who obtained the license by fraudulent representation, for incompetency in practice, for use of untruthful or improbable statements to patrons or in his advertisements, for habitual intoxication, for failure to renew, or for unprofessional and immoral conduct. The board may authorize the department to reissue a license after a lapse of not less than six (6) months, if in the board's judgment, the act or conditions of disqualification have been remedied. It is a violation of this act for a person engaged in the occupation of a masseur to advertise or assert as a licensee under this act that he diagnoses or treats a disease, injury, or illness.

**History:** En. Sec. 8, Ch. 302, L. 1967; amd. Sec. 5, Ch. 321, L. 1974; amd. Sec. 289, Ch. 350, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 321 and once by Ch. 350. Neither amendatory act mentioned or en-

tirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments.

Chapter 321, Laws of 1974, substituted "board" at the beginning of the section for "state board of massage examiners"; inserted "suspend" near the beginning of the first sentence; and inserted "for fail-

ure to renew" near the end of the first sentence.

Chapter 350, Laws of 1974, substituted "board" at the beginning of the section for "state board of massage examiners"; substituted "deny, suspend, revoke or refuse to renew" in the first sentence for "refuse to grant, revoke or renew"; inserted "authorize the department to" in the second sentence after "board may"; and made minor changes in punctuation and phraseology.

**66-2909. Renewal of license.** A license expires on December 31 of each year and shall be renewed then or thereafter, by the department, on payment of a renewal fee of not less than ten dollars (\$10) or more than twenty-five dollars (\$25), as set by the board. Any licensee who fails to renew on or before December 31 of each year shall be required to pay, in addition to the renewal fee, a late renewal fee, in an amount not to exceed ten dollars (\$10). Failure to so renew within thirty (30) days following December 31 shall be cause for suspension or revocation of the license.

**History:** En. Sec. 9, Ch. 302, L. 1967; amd. Sec. 6, Ch. 321, L. 1974; amd. Sec. 290, Ch. 350, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 321 and once by Ch. 350. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 321, Laws of 1974, substituted "board" at the end of the first sentence for "state board of massage examiners"; and added the second and third sentences.

Chapter 350, Laws of 1974, substituted "department" in the first sentence for "board"; substituted "board" at the end of the first sentence for "state board of massage examiners"; and made minor changes in punctuation and phraseology.

**66-2910. Disposition of fees—receipts and disbursements.** (1) Examination and renewal fees received by the department under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

(2) The department shall keep an accurate account of funds received and vouchers issued.

(3) The members of the board shall receive a per diem of twenty-five dollars (\$25) for each day during which they are actually engaged in the discharge of their duties, and mileage as provided in section 59-801 for each mile necessarily traveled in going to and from a meeting of the board.

(4) Per diem, mileage, and other expenses necessarily connected with the board shall be paid only out of the earmarked revenue fund.

**History:** En. Sec. 10, Ch. 302, L. 1967; amd. Sec. 7, Ch. 321, L. 1974; amd. Sec. 291, Ch. 350, L. 1974.

appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 321 and once by Ch. 350. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not

#### Amendments

Chapter 321, Laws of 1974, substituted "board" in subsections (1) and (4) for "state board of massage examiners"; increased the per diem in subsection (3) from \$15 to \$25; and substituted "as set

forth in section 59-801, R. C. M. 1947" in subsection (3) for "at the rate of ten cents (10¢) per mile."

Chapter 350, Laws of 1974, inserted the subsection designations; substituted "department" for "state board of massage examiners" in subsection (1) and for "secretary-treasurer" in subsection (2); deleted portions of subsection (1) which provided for fees to go into an expense account by way of the secretary-treasurer of the state board and the state treasurer (see parent

volume); added "subject to section 82A-1603(6)" at the end of subsection (1); deleted from the end of subsection (2) "by the board," and a provision for an annual report to the governor (see parent volume); substituted "as provided in section 59-801" in subsection (3) for "at the rate of ten cents (10¢) per mile"; deleted "of the state board of massage examiners" at the end of subsection (4); and made minor changes in punctuation and phraseology.

**66-2914. Exemptions.** The following classes of persons are exempt from this act:

1. and 2. \* \* \* [Same as parent volume.]

3. Educational institutions maintaining a full-time faculty with a varied curriculum.

4. Athletic clubs and others who apply for and acquire from the board an exemption. Such an exemption may be granted or denied at the discretion of the board in carrying out the purposes of this act.

5. Those persons who may have qualified for exemption under prior law shall be required by this act to qualify for exemption in the manner stated in this section before their exemption may be continued.

**History:** En. Sec. 14, Ch. 302, L. 1967; amd. Sec. 8, Ch. 321, L. 1974.

#### **Amendments**

The 1974 amendment deleted former item

3 which exempted "schools, Y.M.C.A. clubs, athletic clubs, and similar organizations who furnish massage to their players and members"; and added items 3, 4 and 5.

### **CHAPTER 30—HEARING AID DISPENSERS**

#### **Section**

66-3003. Definitions.

66-3004. [Transferred.]

66-3005. Powers and duties of board.

66-3006. Meeting place and time—quorum.

66-3007. License required to dispense and fit hearing aids.

66-3009. Exclusions.

66-3011. Written and practical tests—date of examinations.

66-3014. Temporary license—qualifications—fee.

66-3015. Permanent place of business in state necessary—exception—records—notice.

66-3016. Annual renewal fee.

66-3019. Reciprocity—examination unnecessary—fee.

66-3020. Deposit of fees in earmarked revenue fund—per diem and travel expenses.

66-3022. Licensee entitled to disciplinary hearing if duly requested.

#### **66-3002. Repealed.**

##### **Repeal**

Section 66-3002 (Sec. 2, Ch. 204, L. 1969), relating to creation of board of

hearing aid dispensers, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-3003. Definitions.** Unless the context requires otherwise, in this act:

(1) "Board" means the board of hearing aid dispensers, provided for in section 82A-1602.12.

(2) "License" means a regular or temporary license.



(3) "Hearing aid" means an instrument or advice designed for or represented as aiding or improving defective human hearing and parts, attachments, or accessories of the instrument or device.

(4) "Practice of dispensing and fitting hearing aids" means the evaluation or measurement of the powers or range of human hearing by means of an audiometer and a visual examination of the ear and canal or by any other means devised and the consequent selection, adaption, or sale of hearing aids intended to compensate for hearing loss, including eyeglass hearing aids and their fittings, and the making of an impression of the ear, but does not include batteries, cords, or accessories.

(5) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

**History:** En. Sec. 3, Ch. 204, L. 1969; for in section 82A-1602.12" in subdivision amd. Sec. 292, Ch. 350, L. 1974. (1); added subsection (5); and made minor changes in punctuation and phraseology.

#### **Amendments**

The 1974 amendment inserted "provided

### **66-3004. [Transferred.]**

#### **Compiler's Notes**

Section 293, Ch. 350, Laws of 1974 re-numbered this section as sec. 82A-1602.12.

**66-3005. Powers and duties of board.** The powers and duties of the board are to:

(1) License persons who apply and are qualified to practice the fitting of hearing aids;

(2) Establish a procedure to act as a grievance board to receive, investigate, and mediate complaints from any source concerning the activities of persons licensed under this act, or their agents whether licensed or not;

(3) Suspend or revoke licenses under this act;

(4) Designate the time and place for examining applicants for license;

(5) Adopt rules necessary to carry out this act;

(6) Require the periodic inspection and calibration of audiometric testing equipment and carry out periodic inspections of facilities of persons who practice the fitting or selling of hearing aids;

(7) Prepare examinations required by the act;

(8) Initiate legal action to enjoin from operation a person or corporation engaged in the sale and fitting of hearing aids in this state, who is not licensed under this act.

**History:** En. Sec. 5, Ch. 204, L. 1969; amd. Sec. 294, Ch. 350, L. 1974.

issuance and renewal of licenses; deleted former subdivision (7) relating to appointment of representatives to conduct examinations; deleted former subdivision (12) relating to employment and compensation of personnel; redesignated the remaining subdivisions; and made minor changes in phraseology. For text of deleted portions, see parent volume.

#### **Amendments**

The 1974 amendment deleted former subdivisions (1) and (2) relating to authorization for disbursements and conduct of qualifying examinations for applicants; deleted former subdivision (4) relating to

**66-3006. Meeting place and time—quorum.** (1) The board shall meet at least once each year at a place and time determined by the chairman

and at other times and places specified by the chairman to carry out this act. Three (3) members, including either the otolaryngologist or the audiologist, constitute a quorum.

(2) Members of the board shall annually designate one (1) member to serve as chairman and another member to serve as secretary-treasurer.

**History:** En. Sec. 6, Ch. 204, L. 1969;  
amd. Sec. 295, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment added subsection (2); and made minor changes in style and phraseology.

**66-3007. License required to dispense and fit hearing aids.** A person may not engage in the sale or practice of dispensing and fitting hearing aids or display a sign or in any other way advertise or hold himself out as a person who practices the dispensing and fitting of hearing aids unless he holds a current regular or temporary license issued by the department.

**History:** En. Sec. 7, Ch. 204, L. 1969;  
amd. Sec. 296, Ch. 350, L. 1974.

partment" for "board" at the end of the section; and made minor changes in phraseology.

**Amendments**

The 1974 amendment substituted "de-

**66-3009. Exclusions.** (1) This act does not apply to a person who is a physician licensed to practice by the Montana state board of medical examiners.

(2) This act does not apply to a person while he is engaged in the practice of fitting hearing aids if his practice is part of the academic curriculum of an accredited institution of higher education, or part of a program conducted by a public agency or by a charitable or nonprofit organization which is primarily supported by voluntary contributions, unless they sell hearing aids.

**History:** En. Sec. 9, Ch. 204, L. 1969;  
amd. Sec. 297, Ch. 350, L. 1974.

tana state board of medical examiners" in subsection (1) for "board of medical examiners of the state of Montana."

**Amendments**

The 1974 amendment substituted "Mon-

**66-3011. Written and practical tests—date of examinations.** (1) An applicant for a license who is notified by the department that he has fulfilled the requirements of section 66-3010 shall appear at a time and place designated by the board to be examined by written and practical tests in order to demonstrate that he is qualified to practice the fitting of hearing aids.

(2) The department shall, subject to section 82A-1603, give examinations required to permit applicants to be examined within thirty (30) days following the board's approval of the application for examination. Examination may be delayed on notice to the department, under this section.

**History:** En. Sec. 11, Ch. 204, L. 1969;  
amd. Sec. 298, Ch. 350, L. 1974.

partment" for "board" throughout the section; inserted "subject to section 82-1603" in subsection (2); and made minor changes in style, punctuation and phraseology.

**Amendments**

The 1974 amendment substituted "de-

**66-3013. Repealed.****Repeal**

Section 66-3013 (Sec. 13, Ch. 204, L. 1969), relating to licensing of practitioners

active on the effective date of the act, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-3014. Temporary license — qualifications — fee.** (1) An applicant who fulfills the requirements of section 66-3010 and who has not previously applied to take the examination under section 66-3011 may apply to the department for a temporary license.

(2) On receiving an application under subsection (1) of this section, accompanied by a fee of twenty-five dollars (\$25), the department shall issue a temporary license which entitles the applicant to practice the fitting and dispensing of hearing aids for a period ending thirty (30) days after the conclusion of the next examination given after the date of issue.

(3) No temporary license may be issued by the department unless the applicant shows to the satisfaction of the board that he is, or will be, supervised and trained by a person who holds a valid license issued under this act.

(4) If a person who holds a temporary license does not take the next examination given after the date of issue, the temporary license may not be renewed, except for a good cause shown to the satisfaction of the board.

(5) If a person who holds a temporary license takes and fails to pass the next examination given after the date of issue, the board may authorize the department to renew the temporary license for a period ending thirty (30) days after the results of the next examination given after the dates of renewal are announced. In no event may more than two (2) renewals be permitted. The fee for renewal is thirty dollars (\$30).

**History:** En. Sec. 14, Ch. 204, L. 1969; amd. Sec. 299, Ch. 350, L. 1974.

3013" in subsection (1) after "66-3010"; substituted "department" for "board" in subsections (1) through (3); inserted "authorize the department to" in the first sentence of subsection (5) after "board may"; and made minor changes in phraseology.

**Amendments**

The 1974 amendment deleted "but does not fulfill the requirements of section 66-

**66-3015. Permanent place of business in state necessary—exception—records—notice.** (1) A person who obtains a license to dispense hearing aids as a business must have a permanent place of business in this state that will be opened to serve the public, having the necessary testing, fitting and hearing aid accessories needed by the hard of hearing public in the wearing of hearing aids.

(2) Subsection (1) of this section does not apply to persons who obtain a license as sales people representing a licensed hearing aid dispenser.

(3) The department shall keep a record of the places of practice of persons who hold a regular license or temporary licenses. A notice required to be given by the board or department to a person who holds a regular or temporary license may be given by mailing it to him at the address last given by him to the department.

**History:** En. Sec. 15, Ch. 204, L. 1969; amd. Sec. 300, Ch. 350, L. 1974.

partment" at the beginning and the end of subsection (3) for "board"; inserted "or department" in the second sentence of subsection (3) after "board"; and made minor changes in phraseology.

**Amendments**

The 1974 amendment substituted "de-



**66-3016. Annual renewal fee.** A person who practices the fitting of hearing aids shall annually pay to the department a fee of fifty dollars (\$50) for a renewal of his license. A thirty (30) day grace period is allowed after expiration of a license, during which it may be renewed on payment of a fee of fifty-five dollars (\$55) to the department. After the expiration of the grace period, the board may authorize the department to renew a license on payment of sixty dollars (\$60) to the department. A person who applies for renewal, whose license was suspended for failure to renew, is not required to submit to an examination as a condition of renewal for a three (3) year period after suspension.

**History:** En. Sec. 16, Ch. 204, L. 1969; amd. Sec. 301, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "department" in the first sentence and the

end of the second and third sentences for "board"; inserted "authorize the department to" in the third sentence after "board may"; and made minor changes in phraseology.

**66-3019. Reciprocity—examination unnecessary—fee.** When the board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect under this act for the practice of fitting and selling hearing aids, and that the state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants under this act are qualified to dispense and fit hearing aids, the board may authorize the department to issue a license to applicants who hold current, unsuspended and unrevoked licenses to fit and sell hearing aids in the other state or jurisdiction. No such applicants for a license under this section are required to submit to or undergo a qualifying examination, or the like, other than the payment of fees, if the person complies with all other requirements of this act.

**History:** En. Sec. 19, Ch. 204, L. 1969; amd. Sec. 302, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment inserted "authorize

the department to" in the first sentence after "board may"; and made minor changes in phraseology.

**66-3020. Deposit of fees in earmarked revenue fund—per diem and travel expenses.** (1) Fees collected by the department under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

(2) Each member of the board shall receive twenty dollars (\$20) per diem when actually engaged in the discharge of his official duty, and in addition shall also be reimbursed for reasonable and necessary travel expense in attending a meeting of the board in the state.

**History:** En. Sec. 20, Ch. 204, L. 1969; amd. Sec. 303, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "Fees collected by the department under this act" in subsection (1) for "All fees including examination fees, license fees, renewal fees, fines, penalties and other payments,";

added "for the use of the board, subject to section 82A-1603(6)" at the end of subsection (1); deleted two sentences at the end of subsection (1) concerning appropriations by the legislative assembly and disbursement of funds (see parent volume); and made minor changes in phraseology.

**66-3022. Licensee entitled to disciplinary hearing if duly requested.** No license issued under this act may be suspended, revoked, denied, or renewal denied without notice and a hearing, if requested by the applicant.

**History:** En. Sec. 22, Ch. 204, L. 1969; amd. Sec. 304, Ch. 350, L. 1974.

**Compiler's Notes**

The compiler deleted the words "right to appeal" from the caption and a subsection designation (1) at the beginning of the section.

**Amendments**

The 1974 amendment inserted "notice

and" after "without"; deleted "on due notice to the board within thirty (30) days after notice of the license being suspended, revoked or renewal denied" at the end of the section; deleted a former subsection (2) providing for appeal from the board's final decision (see parent volume); and made minor changes in punctuation and phraseology.

**66-3023. Repealed.**

**Repeal**

Section 66-3023 (Sec. 23, Ch. 204, L. 1969), relating to review of a board deci-

sion by the district court, was repealed by Sec. 363, Ch. 350, Laws of 1974.

CHAPTER 31—NURSING HOME ADMINISTRATORS

**Section**

- 66-3101. Definitions.
- 66-3102. [Transferred.]
- 66-3103. Qualifications for licensure.
- 66-3104. Registration and licensing function.
- 66-3105. Fees.
- 66-3106. Deposit of fees.
- 66-3109. Duties of the board.
- 66-3110. Renewal of registration and license.
- 66-3111. Reciprocity.
- 66-3112. Misdemeanor.

**66-3101. Definitions.** Unless the context requires otherwise, in this act:

(1) "Board" means the board of nursing home administrators, provided for in section 82A-1602.17.

(2) "Nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of a long-term care facility, whether the individual has an ownership interest in the facility, and whether his functions and duties are shared with one or more individuals.

(3) "Long-term care facility" means any skilled nursing facility, nursing home or intermediate care facility as defined for licensing purposes under state law or the rules for long-term care facilities of the department of health and environmental sciences, whether proprietary or nonprofit, including facilities owned or administered by the state or a political subdivision.

(4) "Inactive nursing home administrator" means an individual who has been licensed in this state as a nursing home administrator, and whose license has not been revoked or suspended but who is not actively engaged in nursing home administration.

(5) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. Sec. 1, Ch. 363, L. 1969; amd. Sec. 1, Ch. 483, L. 1973; amd. Sec. 305, Ch. 350, L. 1974.

#### Amendments

The 1973 amendment corrected the names of the board of administrators and of the department of health and environmental sciences; substituted references to long-term care facilities for references to extended care facilities and nursing homes throughout the section; substituted "any

skilled nursing facility, nursing home or intermediate care facility — A as defined" near the beginning of subdivision (c) [now subdivision (3)] for "any institution or facility defined as such"; added subdivision (d) [now subdivision (4)]; and made minor changes in phraseology.

The 1974 amendment substituted "provided for in section 82A-1602" in subdivision (1) for "hereinafter created"; added subdivision (5); and made minor changes in style, punctuation and phraseology.

### 66-3102. [Transferred.]

#### Compiler's Notes

Section 306, Ch. 350, Laws of 1974 re-numbered this section as sec. 82A-1602.17.

**66-3103. Qualifications for licensure.** (1) The department shall register and issue licenses to qualified persons as nursing home administrators, and the board shall establish qualification criteria for nursing home administrators. No registration or license shall be issued to a person as a nursing home administrator unless:

(a) He is of good character, of sound physical and mental health, has received a high school diploma or its equivalent; and

(b) Has satisfactorily completed a course of instruction and training prescribed by the board, which shall be designed and administered to present sufficient knowledge of the needs properly served by long-term care facilities; laws governing the operation of long-term care facilities and the protection of the interests of patients; and the elements of good nursing home administration; or have presented evidence satisfactorily to the board of sufficient education, training, or experience in the foregoing fields to administer, supervise, and manage a long-term care facility; and

(c) Has passed an examination designed to test for competence in the subject matters referred to in subsection (b).

(2) The minimum standards for qualification shall comply with the requirements, if any, set forth in Title XIX of the Social Security Act (P.L. 90-248, 1967), as amended.

History: En. Sec. 3, Ch. 363, L. 1969; amd. Sec. 10, Ch. 168, L. 1971; amd. Sec. 3, Ch. 483, L. 1973; amd. Sec. 307, Ch. 350, L. 1974.

#### Amendments

The 1971 amendment deleted "at least twenty-one (21) years of age" from subdivision (a).

The 1973 amendment inserted references to registration in two places in the preliminary paragraph; added to subdivision (a) the requirement for a high-school diploma or equivalent; substituted ref-

erences to long-term care facilities for references to nursing homes in three places in subdivision (b); deleted from the final proviso three temporary and obsolete sentences relating to temporary waivers for administrators serving before the date of the act; and made minor changes in phraseology.

The 1974 amendment substituted "department" for "board" at the beginning of subsection (1); deleted "administered by the board" in subdivision (1)(c) after "examination"; and made minor changes in style, punctuation and phraseology.

**66-3104. Registration and licensing function.** (1) The department shall register and license nursing home administrators under the rules adopted by the board. A nursing home administrator's registration and license is not transferable and is valid until surrendered for cancellation,



suspended, or revoked for violation of this act or any other laws or rules relating to the proper administration and management of a long-term care facility. Denial of issuance or renewal, suspension, or revocation under this act is subject to review by the board on the timely written request for review within thirty (30) days.

(2) If the board determines that preliminary qualifications set forth in 66-3103 (1) and (2), will have been met before the next examination it may authorize the department to issue a temporary permit for a period of one hundred eighty (180) days or until the scores of the next examination are announced. No temporary permit may be issued to an applicant after the date of the first examination for which he is eligible.

**History:** En. Sec. 4, Ch. 363, L. 1969; amd. Sec. 4, Ch. 483, L. 1973; amd. Sec. 308, Ch. 350, L. 1974.

#### Amendments

The 1973 amendment inserted references to registration in the first and second sentences in subsection (1); substituted "long-term care facility" for "nursing home" at the end of the second sentence in subsection (1); substituted "will have been met before the next examination" for "have been met before examination" in the first sentence of subsection (2);

substituted "the scores of the next subsequent examination are announced" at the end of the first sentence of subsection (2) for "the date of the next subsequent examination, whichever is earlier"; and made a minor change in phraseology.

The 1974 amendment substituted "department" for "board" in subsection (1); substituted "66-3103 (1) and (2)" in subsection (2) for "66-3103 (a) and (b)"; inserted "authorize the department to" in subsection (2); and made minor changes in style, punctuation and phraseology.

#### 66-3105. Fees. (a) and (b). \* \* \* [Same as parent volume.]

(c) Each person registered as an inactive nursing home administrator shall be required to pay a registration fee in the amount of not more than twenty-five dollars (\$25). An inactive registration shall expire on December 31, in the year for which it is issued, and shall be renewable annually upon timely payment of the inactive registration fee.

(d) The fee for issuing a duplicate license shall be ten dollars (\$10).

**History:** En. Sec. 5, Ch. 363, L. 1969; amd. Sec. 5, Ch. 483, L. 1973.

#### Amendments

The 1973 amendment added subsections (c) and (d).

**66-3106. Deposit of fees.** Fees collected by the department under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6). This fund may be used to pay the compensation and expenses of members of the board, and other expenses necessary to administer this act.

**History:** En. Sec. 6, Ch. 363, L. 1969; amd. Sec. 309, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment inserted "by the department" in the first sentence; deleted "monthly to the state treasurer, who shall keep the same in a special account to be known as the state board of examiners for nursing home administrators' account" in

the first sentence after "deposited"; substituted "board" in the first sentence for "state department of health"; deleted "in addition to other moneys appropriated to carry out this act" in the first sentence after "board"; added "subject to section 82A-1603(6)" at the end of the first sentence; deleted "for the board" in the second sentence before "to administer"; and made minor changes in phraseology.

#### 66-3109. Duties of the board. The board shall:

(1) Develop, impose, and enforce standards which must be met by individuals in order to register and receive a license as a nursing home

administrator, designed to ensure that nursing home administrators are individuals of good character and otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators.

(2) Develop and apply appropriate techniques, including examination and investigations, for determining whether individuals meet the standards.

(3) Authorize the department to register and issue licenses to individuals, after application of the techniques, determined to meet the standards, and for cause, after notice and hearing, revoke or suspend licenses previously issued if the individual holding the license is determined substantially to have failed to conform to the requirements of the standards. The board may, in its discretion, defer execution of its order of revocation or suspension for the purpose of permitting continuity of care for patients when the need for this continuity of care outweighs any harm or danger which might result from the failure of the nursing home administrator to be registered and licensed, resulting in the closure of a long-term care facility.

(4) Establish and implement procedures designed to ensure that individuals registered and licensed as nursing home administrators will, during the period that they serve, comply with the requirements of the standards.

(5) On receipt of a written and signed complaint, an investigation of the matter contained in the complaint shall be initiated, subject to sections 82A-1603 and 82A-1604. At its next meeting, the complaint shall be presented to the board together with the report of investigation and recommendations and on this basis, the board shall determine whether to bring charges and provide for a hearing.

(6) Conduct a continuing study and investigation of nursing home administrators within the state with a view to the improvement of the standards imposed for the licensing of administrators and of procedures and methods for the enforcement of the standards with respect to nursing home administrators.

(7) Conduct, or cause to be conducted, one or more courses of instruction and training sufficient to meet the requirements of this act, and make provisions for the conduct of these courses and their accessibility to residents of this state, unless it finds that there are a sufficient number of courses conducted by others within this state to meet the needs of the state. Instead, the board may approve courses conducted within and outside of this state sufficient to meet the education and training requirements of this act.

(8) Prescribe or approve continuing education courses.

**History:** En. Sec. 9, Ch. 363, L. 1969; amd. Sec. 6, Ch. 483, L. 1973; amd. Sec. 310, Ch. 350, L. 1974.

#### **Amendments**

The 1973 amendment inserted references to registration in subdivisions (a), (c) and (d); substituted "long-term care facility" for "nursing home" at the end of subdivision (c); added subdivision (h); and made minor changes in phraseology and punctuation.

The 1974 amendment redesignated subdivisions (a) through (h) as (1) through (8); inserted "Authorize the department to" at the beginning of subdivision (3); deleted "by the board" in the first sentence of subdivision (3) after "previously issued"; added "subject to sections 82A-1603 and 82A-1604" at the end of the first sentence of subdivision (5); and made minor changes in punctuation and phraseology.

**66-3110. Renewal of registration and license.** Every holder of a nursing home administrator's registration and license shall renew it annually by payment of the required fee for the next subsequent year, prior to the expiration of his currently valid registration and license on December 31. Renewals of registrations or licenses shall be granted as a matter of course, providing the holder has completed a continuing education course prescribed or approved by the board, however, if the board finds after due notice and hearing, that the applicant has acted or failed to act in such a manner, or under circumstances, as would constitute grounds for suspension or revocation of a registration and license, it shall not issue the renewal.

**History:** En. Sec. 10, Ch. 363, L. 1969; amd. Sec. 7, Ch. 483, L. 1973.

to registration; inserted the proviso relating to continuing education; and made minor changes in phraseology.

**Amendments**

The 1973 amendment inserted references

**66-3111. Reciprocity.** The department may issue at the board's discretion a nursing home administrator's license, without examination, to a person who holds a current license as a nursing home administrator from another jurisdiction, if the board finds that the standards for licensure in the other jurisdiction are at least substantially equivalent of those prevailing in this state, and that the applicant is otherwise qualified.

**History:** En. Sec. 11, Ch. 363, L. 1969; amd. Sec. 311, Ch. 350, L. 1974.

partment" for "board" at the beginning of the section; and made minor changes in phraseology.

**Amendments**

The 1974 amendment substituted "de-

**66-3112. Misdemeanor.** It shall be unlawful for any person to act or serve in the capacity of a nursing home administrator unless he is the holder of a registration and license as a nursing home administrator, issued in accordance with the provisions of this act. A person who violates the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.

**History:** En. Sec. 12, Ch. 363, L. 1969; amd. Sec. 8, Ch. 483, L. 1973.

in the middle of the first sentence; and added the second sentence.

**Amendments**

The 1973 amendment deleted "and constitute a misdemeanor" following "It shall be unlawful" at the beginning of the first sentence; inserted "registration and"

**Repealing Clause**

Section 9 of Ch. 483, Laws 1973 read "Section 66-3113, R. C. M. 1947, is repealed."

**66-3113. Repealed.**

**Repeal**

Section 66-3113 (Sec. 13, Ch. 363, L.

1969), relating to local license taxes, was repealed by Sec. 9, Ch. 483, Laws 1973.

**66-3114. Repealed.**

**Repeal**

Section 66-3114 (Sec. 15, Ch. 363, L. 1969), relating to judicial review of a

board order or decision, was repealed by Sec. 363, Ch. 350, Laws of 1974.



## CHAPTER 32—PSYCHOLOGISTS—LICENSING AND REGULATION

## Section

- 66-3201. Legislative finding and purpose.
- 66-3202. Definitions.
- 66-3203. License required to practice psychology—exempt activities.
- 66-3204. [Transferred.]
- 66-3205. Duties of board.
- 66-3206. Examinations and issuance of license—expiration and renewal—publication of list of psychologists.
- 66-3207. Additional powers and duties of board.
- 66-3208. Qualifications and requirements for licensure—reciprocity.
- 66-3209. Grounds for refusal or revocation of license—hearing.
- 66-3211. Fees.
- 66-3212. Confidential relationship between psychologist and client.
- 66-3213. Penalties for violation of act.
- 66-3214. Injunction of unlawful practice—restrictions on scope of practice.

**66-3201. Legislative finding and purpose.** The legislative assembly finds and declares that the practice of psychology in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of psychology and from unprofessional conduct by persons licensed to practice psychology.

**History:** En. Sec. 1, Ch. 73, L. 1971.

**Title of Act**

An act providing for the licensing and regulation of persons in Montana repre-

sending themselves as psychologists, and creating a state board of psychologist examiners, prescribing its powers and duties, and providing penalties for violations.

**66-3202. Definitions.** Unless the context requires otherwise, in this act:

(1) "Accredited college or university" means a college or university accredited by the regional accrediting association for institutions of higher learning, such as the Northwest Association of Secondary and Higher Schools.

(2) "Board" means the board of psychologists, provided for in section 82A-1602.27.

(3) A person represents himself to be a "psychologist" when he holds himself out to the public by a title or description of services incorporating the words psychologist, psychological, psychologic, or psychology and offers to render or renders psychological services defined in subsection (4) of this section to individuals, groups, corporations, or the public for compensation or fee.

(4) "Practice of psychology" means the application of principles, methods and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, thinking, motions, and interpersonal relationship; the methods and procedures of interviewing, counseling, and behavior modification including psychotherapeutic techniques and hypnosis; and constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivation.

(5) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. Sec. 2, Ch. 73, L. 1971; amd. Sec. 312, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "board of psychologists" for "state board of psychology" and added "provided for in section 82A-1602.27" in subdivision (2); added subdivision (5); and made minor changes in punctuation and phraseology.

### 66-3203. License required to practice psychology—exempt activities.

(1) A person may not represent himself to be a psychologist or engage in the practice of psychology unless he is licensed under this act.

(2) This act does not prevent:

(a) Qualified members of other professions such as physicians, social workers, lawyers, pastoral counselors, or educators, from doing work of a psychological nature consistent with their training and the codes of ethics of their respective professions if they do not hold themselves out to the public by a title or description incorporating the words "psychology" or "psychologist."

(b) The activities, services, and use of an official title on the part of a person in the employ of a federal, state, county, or municipal agency, or of other political subdivisions, or an educational or charitable institution in so far as these activities and services are a part of the duties of his office or position with the agency or institution.

(c) The activities and services of a student, intern, or resident in psychology, pursuing a course of study at an accredited university or college, or working in a generally recognized training center, if these activities and services constitute a part of his supervised course of study.

(d) The activities and services of a person who is not a resident of this state, in rendering consulting psychological services in this state when these services are rendered for a period which does not exceed in the aggregate more than sixty (60) days during a calendar year if the person is authorized under the laws of the state or country of his residence to perform these activities and services; however, these persons shall report to the department the nature and extent of the services in this state if they exceed ten (10) days in a calendar year.

(e) A person authorized by the laws of the state or country of his former residence to perform activities and services, who has recently become a resident of this state, and who has applied for a license in this state, pending disposition of his application.

(f) The use of the term "social psychologist" by a person who:

(i) Has been graduated with a doctoral degree in sociology or social psychology from an institution whose credits in sociology or social psychology are acceptable by a recognized educational institution;

(ii) Has passed comprehensive examinations in the field of social psychology as part of the requirement for the doctoral degree or who has had equivalent specialized training in social psychology; and

(iii) Has filed with the department a statement of facts demonstrating his compliance with this subdivision.

(g) The offering of lecture services for a fee by a person exempted from licensing requirements by virtue of his employment.

(h) Activities of a psychological nature on the part of persons who are salaried employees of accredited academic institutions, governmental agencies, research laboratories, and business corporations, if these employees are performing the duties for which they are employed by the organizations, and within the confines of the organization.

**History:** En. Sec. 3, Ch. 73, L. 1971; amd. Sec. 313, Ch. 350, L. 1974.

#### **Amendments**

The 1974 amendment deleted "After Jan-

uary 1, 1972" at the beginning of subsection (1); substituted "department" for "board" in subsection (2); and made minor changes in punctuation and phraseology.

### **66-3204. [Transferred.]**

#### **Compiler's Notes**

Section 314, Ch. 350, Laws of 1974 renumbered this section as sec. 82A-1602.27.

**66-3205. Duties of board.** (1) The board shall hold a regular annual meeting in which it shall select from its members a chairman and a secretary. The department shall keep a record of the board's proceedings. Other regular meetings shall be held at such times as the rules of the board provide. Special meetings may be held at times considered necessary or advisable by the chairman and the majority of its members, or on the request of the governor. Reasonable notice of meetings shall be given in the manner prescribed by the board. The quorum of the board consists of the majority of its members.

(2) Each board member shall receive actual and necessary traveling and subsistence expenses incidental to board meetings.

(3) The board may make reasonable and necessary rules for the proper performance of its duties and for the regulation of proceedings before it.

(4) The attorney general shall act as attorney for the board. He or his representative may sit as an ex officio member of the board in an advisory capacity only.

(5) The board shall adopt an official seal.

**History:** En. Sec. 5, Ch. 73, L. 1971; amd. Sec. 312, Ch. 350, L. 1974.

#### **Amendments**

The 1974 amendment redesignated the subsections; substituted "department" in subsection (1) for "secretary of the board"; deleted former subsection (2) which read "The board may employ such other persons as it deems necessary or desirable to carry out the provisions of this

act, all of whom shall receive such compensation as may be fixed in the budget from time to time"; deleted "as provided for in the statutes" at the end of present subsection (2); deleted "and which are not inconsistent with the constitution or the laws of this state" at the end of subsection (3); deleted former subsection (5) which read "The board shall prepare a report to the governor as required by law"; and made minor changes in phraseology.

**66-3206. Examinations and issuance of license—expiration and renewal—publication of list of psychologists.** (1) The department shall administer examinations to qualified applicants for licensing at least once a year, subject to section 82A-1603. The board shall determine the subject and scope of specialized psychological areas and techniques for examination. Examinations may be written, oral, or both. The board shall determine an acceptable level of performance for each examination.



(2) An applicant who fails his first examination may be re-examined at subsequent examination on the payment of another examination fee. An applicant who fails two (2) successive examinations may apply for re-examination after two (2) years of additional professional experience or training.

(3) The department shall issue a license to each person who meets the requirements for licensure as prescribed in this act. The license shall include the dates of issuance and expiration and shall bear a serial number. It shall be signed by the secretary of the board under the seal of the board.

(4) The license expires on January 1 following the date of its issuance or renewal and is invalid thereafter. The department shall notify each person licensed under this act relative to the date of the expiration of his license and the amount of his renewal fee. This notice shall be mailed to each licensed psychologist at his listed address at least one (1) month before the expiration of the license.

(5) Renewal may be made during the sixty (60) days prior to the expiration date by application. Failure on the part of a person licensed to pay his renewal fee by the expiration date does not deprive him of the right to renew his license, but the fee shall be increased ten per cent (10%) for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal may not exceed twice the normal renewal fee. Application for renewal following a lapse of one (1) year or more will be subject to review by the board, and the applicant may be requested to complete an examination successfully if the board so determines.

(6) The department shall publish yearly a list of psychologists licensed under this act. This list shall contain names and addresses and other information the board considers advisable. The department shall mail a copy of this list to each person licensed under this act, place a copy on file in the secretary of state's office, and furnish copies to the public, on request.

**History:** En. Sec. 6, Ch. 73, L. 1971;  
amd. Sec. 316, Ch. 350, L. 1974.

partment" for "board" throughout this section; added "subject to section 82A-1603" to the end of the first sentence in subsection (1); and made minor changes in phraseology.

#### **Amendments**

The 1974 amendment substituted "de-

**66-3207. Additional powers and duties of board.** (1) In addition to the other powers and duties set forth, the board may:

(a) Revoke and suspend licenses.

(b) Conduct hearings upon complaints concerning persons licensed under this act.

(c) Cause the prosecution and enjoinder of all persons violating this act, by the complaint of its secretary signed with the county attorney, in the county where the violation took place, and incur necessary expenses therefor.

(d) Study and review new developments in research, training, and the practice of psychology and make recommendations to the governor and other state officials regarding new and revised programs and legislation related to psychology which could be beneficial to the citizens of the state of Montana.

**History:** En. Sec. 7, Ch. 73, L. 1971.

**66-3208. Qualifications and requirements for licensure—reciprocity.** (1) Application for examination for licensing a psychologist shall be made on forms prescribed by the board.

(2) The board shall license as a psychologist any person who pays the prescribed fee, passes the prescribed examination, and submits evidence by oath that he:

(a) Is a resident of or shows satisfactory evidence of intent to become a resident of this state at the time he is licensed;

(b) Is at least eighteen (18) years of age;

(c) Is of good moral character;

(d) Has received a doctoral degree based on a program of studies, primarily psychological in content, from an accredited college or university having an appropriate graduate program;

(e) Has completed at the time of application a minimum of two (2) years of experience in the practice, research, or teaching of psychology. One (1) year of this experience shall be post-doctoral.

(3) A license without examination may be issued to a psychologist licensed or certified in another state where the licensing of certification requirements are substantially equivalent to the requirements of this act, or to a psychologist who is a diplomate in good standing of the American board of professional psychology.

**History:** En. Sec. 8, Ch. 73, L. 1971; amd. Sec. 25, Ch. 94, L. 1973; amd. Sec. 317, Ch. 350, L. 1974.

#### **Amendments**

The 1973 amendment reduced the age specified in subdivision (2) (b) from twenty-one to eighteen years.

The 1974 amendment deleted "Prior to January 1, 1973" at the beginning of subsection (2); inserted "passes the prescribed examination" in subsection (2); deleted former subsection (3) which read "After January 1, 1973, all applicants must meet the requirements set forth in subsection (2) of this section and shall pass an examination administered by the board"; de-

leted former subsection (4) which read "Prior to January 1, 1973, a license may be issued to an individual who has been a resident of the state for at least one (1) year and who holds a master's degree from an accredited college or university based on a program which is primarily psychological, and in addition has had five (5) years of professional experience satisfactory to the board, provided he has met the requirements of paragraphs (a), (b) and (c) of subsection (2) of this section"; redesignated former subsection (5) as subsection (3); deleted "by the board" near the beginning of subsection (3) after "issued"; and made minor changes in punctuation and phraseology.

**66-3209. Grounds for refusal or revocation of license—hearing.** (1) A license applied for, or issued under this act, may be refused or revoked by the board on proof that the person to whom the license was issued:

(a) Has been convicted of a felony;

(b) Has been guilty of fraud or deceit in securing the license or a renewal; or

(c) Is using a narcotic or an alcoholic beverage to an extent that the use impairs his ability to perform the work of a professional psychologist with safety to the public; or

(d) Has been guilty of unprofessional conduct as defined by the code of ethics published by the American Psychological Association.

(2) The board may not revoke or refuse to issue or renew a license for any cause, other than failure to pay fees, unless the person is given notice and opportunity for a hearing before the board.

**History:** En. Sec. 9, Ch. 73, L. 1971;  
amd. Sec. 318, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment added subsection (2); and made minor changes in punctuation and phraseology.

### 66-3210. Repealed.

#### Repeal

Section 66-3210 (Sec. 10, Ch. 73, L. 1971), relating to notice and hearing upon

refusal or revocation of a license, and the procedure for judicial relief, was repealed by Sec. 363, Ch. 350, Laws of 1974.

**66-3211. Fees.** (1) The department shall collect the following fees, none of which is refundable:

- (a) Application fee—twenty-five dollars (\$25) to fifty dollars (\$50)
- (b) Examination fee—an amount commensurate with the charge of the professional examination service and administrative costs of the department and as set by the board
- (c) Certificate fee—ten dollars (\$10)
- (d) Renewal fee—twenty dollars (\$20) to fifty dollars (\$50)

The board may set the application fee and the annual renewal fee annually within the above limits.

(2) The initial certificate fee shall be prorated as follows:

- (a) If the certificate is issued between January 2 and March 31.....  
ten dollars (\$10)
- (b) If the certificate is issued between April 1 and June 30.....  
seven dollars and fifty cents (\$7.50)
- (c) If the certificate is issued between July 1 and September 30.....  
five dollars (\$5)
- (d) If the certificate is issued between October 1 and January 1.....  
two dollars and fifty cents (\$2.50)

(3) Renewal certificates shall be secured annually and dated January 2.

(4) Fees received by the department shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

**History:** En. Sec. 11, Ch. 73, L. 1971;  
amd. Sec. 1, Ch. 59, L. 1974; amd. Sec. 319,  
Ch. 350, L. 1974.

#### Compiler's Notes

This section was amended twice in 1974, once by Ch. 59, and once by Ch. 350. Neither amendatory act mentioned the other, but they almost entirely incorporated each other's changes. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

Both Chapters 59 and 350, Laws of 1974,

substituted "department" for "board" near the beginning of subsections (1) and (4); substituted "Fees" at the beginning of subsection (4) for "All moneys"; deleted "state treasury to the credit of" in subsection (4) after "deposited in the"; added "subject to section 82A-1603(6)" to the end of subsection (4); and made minor changes in style, punctuation and phraseology.

Chapter 59, Laws of 1974, substituted the minimum and maximum fees in subdivision (1)(a) for a fixed \$25 fee; and substituted the examination fee description in subdivision (1)(b) for a \$10 fee.

### 66-3212. Confidential relationship between psychologist and client.

(1) The confidential relations and communications between a psychologist



and his client shall be placed on the same basis as provided by law for those between an attorney and his client. Nothing in this act or any other shall be construed to require such privileged communications to be disclosed.

**History:** En. Sec. 12, Ch. 73, L. 1971.

**Compiler's Notes**

This section as enacted contained no subsection (2).

**66-3213. Penalties for violation of act.** (1) Any person who violates any of the provisions of this act shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding five hundred dollars (\$500), or by both.

**History:** En. Sec. 13, Ch. 73, L. 1971.

**Compiler's Notes**

This section as enacted contained no subsection (2).

**66-3214. Injunction of unlawful practice—restrictions on scope of practice.** (1) The practice of psychology in any way other than as defined in this act may be enjoined by the district court on petition by the board. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have so practiced, the court shall enjoin him from so practicing unless and until he has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction hereby given is in addition to criminal prosecution and punishment.

(2) Nothing in this act shall be construed as permitting psychologists to prescribe drugs, perform surgery or administer electro-convulsive therapy.

**History:** En. Sec. 14, Ch. 73, L. 1971.

**Separability Clause**

Section 15 of Ch. 73, Laws 1971 read:  
“(1) If any provision of this act, or the application thereof to any person or circumstances is held to be invalid, such in-

validity shall not affect any other provision or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.”

**CHAPTER 33—PRIVATE INVESTIGATORS AND PRIVATE PATROL OPERATORS**

**Section**

- 66-3301. Definitions.
- 66-3302. Duty of director.
- 66-3303. Powers of director.
- 66-3304. Practice without license prohibited.
- 66-3305. Scope of regulated investigators.
- 66-3306. Exemptions.
- 66-3307. License—application.
- 66-3308. Contents of application.
- 66-3309. License—criteria.
- 66-3310. License—written examination.
- 66-3311. Denial of license application—hearing.
- 66-3312. Manager of a licensee.
- 66-3313. Temporary operation without individual licensee.
- 66-3314. Form of license.
- 66-3315. License—posting.
- 66-3316. License—identification card.
- 66-3317. Change of names or addresses.

- 66-3318. Responsibility of licensee.
- 66-3319. Confidentiality of information.
- 66-3320. Employee records.
- 66-3321. Licensee advertising.
- 66-3322. License—surety bond.
- 66-3323. Bond requirements.
- 66-3324. Maintenance of bond.
- 66-3325. Cash deposit in lieu of bond.
- 66-3326. Termination of bonds.
- 66-3327. Suspension or revocation.
- 66-3328. Violation as misdemeanor.
- 66-3329. License—expiration and renewal.
- 66-3330. Fee schedule.
- 66-3331. Severability.

**66-3301. Definitions.** As used in this act:

(1) "Director" means the director of the department of professional and occupational licensing.

(2) "Department" means the department of professional and occupational licensing.

(3) "Person" includes any individual, firm, company, association, organization, partnership, and corporation.

(4) "Licensee" means a person licensed under this act and includes, but is not limited to, private investigator and private patrol operator.

(5) "Manager" means the individual under whose direction, control, charge, or management the business of a licensee is operated.

**History:** En. 66-3301 by Sec. 1, Ch. 234, relating private investigators and private patrol operators and to safeguard the interests of the public.  
L. 1974.

**Title of Act**

An act to provide for licensing and reg-

**66-3302. Duty of director.** The director shall administer and enforce the provisions of this act.

**History:** En. 66-3302 by Sec. 2, Ch. 234,  
L. 1974.

**66-3303. Powers of director.** The director may adopt and enforce reasonable rules:

(1) classifying licensees according to the type of business regulated by this act in which they are engaged, including but not limited to private investigators and private patrol operators, and limiting the field and scope of the operations of a licensee to those in which he is classified and qualified to engage;

(2) fixing the qualifications of licensees, in addition to those prescribed in this act, necessary to promote and protect the public welfare; and

(3) carrying out generally the provisions of this act.

**History:** En. 66-3303 by Sec. 3, Ch. 234,  
L. 1974.

**66-3304. Practice without license prohibited.** No person shall engage in a business regulated by this act unless he is licensed under this act; and no person shall falsely represent that he is employed by a licensee.

**History:** En. 66-3304 by Sec. 4, Ch. 234,  
L. 1974.

**66-3305. Scope of regulated investigators.** (1) A private investigator within the meaning of this act is a person other than an insurance adjuster who, for any consideration whatsoever engages in business or accepts employment to furnish, or agrees to make, or makes, any investigation for the purpose of obtaining, information with reference to:

Crime or wrongs done or threatened against the United States of America or any state or territory of the United States of America; the identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person; the location, disposition, or recovery of lost or stolen property; the cause or responsibility for fires, libels, losses, accidents, or damage or injury to persons or to property; or securing evidence to be used before any court, board, officer, or investigating committee.

(2) A private patrol operator, or operator of a private patrol service, within the meaning of this act is a person who, for any consideration whatsoever: Agrees to furnish, or furnishes, a watchman, guard, patrolman, or other person to protect persons or property or to prevent the theft, unlawful taking, loss, embezzlement, misappropriation, or concealment of any goods, wares, merchandise, money, bonds, stocks, notes, documents, papers, or property of any kind; or performs the service of such watchman, guard, patrolman, or other person, for any of said purposes.

(3) A person licensed as a private patrol operator only may not make any investigation or investigations except those that are incidental to the theft, loss, embezzlement, misappropriation, or concealment of any property, or any other thing enumerated in this section, which he has been hired or engaged to protect, guard, or watch.

History: En. 66-3305 by Sec. 5, Ch. 234,  
L. 1974.

**66-3306. Exemptions.** This act does not apply to:

(1) a person employed exclusively and regularly by one (1) employer in connection with the affairs of such employer only and where there exists an employer-employee relationship;

(2) an officer or employee of the United States of America, or of this state or a political subdivision thereof, while such officer or employee is engaged in the performance of his official duties;

(3) a person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons;

(4) a charitable philanthropic society or association duly incorporated under the laws of this state which is organized and maintained for the public good and not for private profit;

(5) an attorney at law in performing his duties as such attorney at law;

(6) a collection agency or an employee thereof while acting within the scope of his employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his property where the contract with an assignor creditor is for



the collection of claims owed or due or asserted to be owed or due or the equivalent thereof; or

(7) insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

History: En. 66-3306 by Sec. 6, Ch. 234,  
L. 1974.

**66-3307. License—application.** An application for a license under this act shall be on a form prescribed by the director and accompanied by the application fee provided by this act.

History: En. 66-3307 by Sec. 7, Ch. 234,  
L. 1974.

**66-3308. Contents of application.** An application shall be verified and shall include:

- (1) the full name and business address of the applicant;
- (2) the name under which applicant intends to do business;
- (3) a statement as to the general nature of the business in which the applicant intends to engage;
- (4) a statement as to the classification or classifications under which the applicant desires to be qualified;
- (5) if the applicant is a person other than an individual, the full name and residence address of each of its partners, officers, and directors, and its manager;
- (6) two (2) recent photographs of the applicant, of a type prescribed by the director, and two (2) classifiable sets of his fingerprints;
- (7) a verified statement of his experience qualifications; and
- (8) such other information, evidence, statements, or documents as may be required by the director.

History: En. 66-3308 by Sec. 8, Ch. 234,  
L. 1974.

**66-3309. License—criteria.** Before an application for a license is granted, the applicant or his manager, shall meet all of the following:

- (1) be at least eighteen (18) years of age;
- (2) be a citizen of the United States and a resident of the state of Montana;
- (3) be of good moral character and temperate habits; and
- (4) comply with such other qualifications concerning training, education or experience as the director may fix by rule.

History: En. 66-3309 by Sec. 9, Ch. 234,  
L. 1974.

**66-3310. License—written examination.** The director shall require an applicant, or his manager, to demonstrate his qualifications by a written examination.

History: En. 66-3310 by Sec. 10, Ch. 234,  
L. 1974.

**66-3311. Denial of license application—hearing.** If a license is denied, the applicant for such license, or for renewal thereof, may request a hearing within thirty (30) days after notice of denial. Such hearing shall be held in accordance with the provisions of the Montana Administrative Procedure Act and the rules of the department of professional and occupational licensing.

History: En. 66-3311 by Sec. 11, Ch. 234,  
L. 1974.

**66-3312. Manager of a licensee.** (1) The business of each licensee shall be operated under the direction, control, charge, or management, in this state, of either the licensee or a manager, but no licensee shall be required to employ more than one (1) manager.

(2) No person shall act as a manager of a licensee until he has complied with each of the following:

(a) demonstrated his qualifications by a written examination, if required by the director; and

(b) made a satisfactory showing to the director that he has the qualifications prescribed by section 9 [66-3309].

History: En. 66-3312 by Sec. 12, Ch. 234,  
L. 1974.

**66-3313. Temporary operation without individual licensee.** Where the individual on the basis of whose qualifications a license under this chapter has been obtained ceases to be connected with the licensee for any reason whatever, the business may be carried on for such temporary period and under such terms and conditions as the director shall provide by regulation.

History: En. 66-3313 by Sec. 13, Ch. 234,  
L. 1974.

**66-3314. Form of license.** The license, when issued, shall be in such form as may be determined by the director and shall include:

(1) the name of the licensee;

(2) the name under which the licensee is to operate;

(3) the number and date of the license.

History: En. 66-3314 by Sec. 14, Ch. 234,  
L. 1974.

**66-3315. License—posting.** The license shall at all times be posted in a conspicuous place in the principal place of business of the licensee.

History: En. 66-3315 by Sec. 15, Ch. 234,  
L. 1974.

**66-3316. License—identification card.** Upon the issuance of a license, a pocket card of such size, design, and content as may be determined by the director shall be issued without charge to each licensee, if an individual, or if the licensee is a person other than an individual, to its manager and to each of its officers and partners, which card shall be evidence that the licensee is duly licensed. When any person to whom a card is issued terminates his position, office or association with the licensee, the card shall

be surrendered to the licensee and within five (5) days thereafter shall be mailed or delivered by the licensee to the department for cancellation.

History: En. 66-3316 by Sec. 16, Ch. 234,  
L. 1974.

**66-3317. Change of names or addresses.** A licensee shall, within thirty (30) days after such change, notify the department of any and all changes of his address, of the name under which he does business, and of any change in its officers or partners.

History: En. 66-3317 by Sec. 17, Ch. 234,  
L. 1974.

**66-3318. Responsibility of licensee.** A licensee shall at all times be legally responsible for the good conduct in the business of each employee, including his manager.

History: En. 66-3318 by Sec. 18, Ch. 234,  
L. 1974.

**66-3319. Confidentiality of information.** (1) Any licensee or officer, director, partner, or manager of a licensee may divulge to any law enforcement officer or district attorney, or his representative, any information he may acquire as to any criminal offense, but he shall not divulge to any other person, except as he may be required by law so to do, any information acquired by him except at the direction of the employer or client for whom the information was obtained.

(2) No licensee or officer, director, partner, manager, or employee of a licensee shall knowingly make any false report to his employer or client for whom information was being obtained.

(3) No written report shall be submitted to a client except by the licensee, qualifying manager, or a person authorized by one (1) or either of them, and such person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in such a report are true and correct.

(4) No licensee, or officer, director, partner, manager, or employee of private investigator shall use a badge in connection with the official activities of the licensee's business.

(5) No licensee, or officer, director, partner, manager, or employee of a licensee shall use a title, or wear a uniform, or use an identification card, or make any statement with the intent to give an impression that he is connected in any way with the federal government, a state government, or any political subdivision of a state government.

(6) No licensee, or officer, director, partner, manager, or employee of a licensee shall enter any private building or portion thereof without the consent of the owner or of the person in legal possession thereof.

(7) No private patrol licensee, or officer, director, partner, manager, or employee of a private patrol licensee shall use a badge, except while engaged in guard or patrol work and while wearing a uniform.

History: En. 66-3319 by Sec. 19, Ch. 234,  
L. 1974.



**66-3320. Employee records.** Each licensee shall maintain a record containing such information relative to his employees as may be prescribed by the director.

History: En. 66-3320 by Sec. 20, Ch. 234,  
L. 1974.

**66-3321. Licensee advertising.** Every advertisement by a licensee soliciting or advertising business shall contain his name and address as they appear in the records of the department.

History: En. 66-3321 by Sec. 21, Ch. 234,  
L. 1974.

**66-3322. License—surety bond.** No license shall be issued under this act unless the applicant files with the director a surety bond executed by a surety company authorized to do business in this state in the sum of two thousand dollars (\$2,000) conditioned for the faithful and honest conduct of his business by such applicant. Such bond as to its form, execution and sufficiency of the sureties shall be approved by the director.

History: En. 66-3322 by Sec. 22, Ch. 234,  
L. 1974.

**66-3323. Bond requirements.** The bond required by this act shall be taken in the name of the people of this state and every person injured by the willful, malicious or wrongful act of the principal may bring an action on the bond in his own name to recover damages suffered by reason of such willful, malicious or wrongful act.

History: En. 66-3323 by Sec. 23, Ch. 234,  
L. 1974.

**66-3324. Maintenance of bond.** Every licensee shall at all times maintain on file the surety bond required by this act in full force and effect and upon failure to do so the license of such licensee shall be forthwith suspended and shall not be reinstated until an application therefore, in the form prescribed by the director, is filed together with a proper bond.

The director may deny the application notwithstanding the applicant's compliance with this section:

(1) for any reason which would justify a refusal to issue or a suspension or revocation of a license; or

(2) for the performance by applicant of any practice while under suspension for failure to keep his bond in force, for which a license under this act is required.

History: En. 66-3324 by Sec. 24, Ch. 234,  
L. 1974.

**66-3325. Cash deposit in lieu of bond.** The sum of two thousand dollars (\$2,000) in cash may be deposited with the state of Montana, in lieu of the surety bond required by section 22 [66-3322].

History: En. 66-3325 by Sec. 25, Ch. 234,  
L. 1974.

**66-3326. Termination of bonds.** Bonds executed and filed with the department shall remain in force and effect until the surety has terminated future liability by thirty (30) day notice to the department.

History: En. 66-3326 by Sec. 26, Ch. 234,  
L. 1974.

**66-3327. Suspension or revocation.** The director may suspend or revoke a license issued under this act if he determines that the licensee or his manager, if an individual, or if the licensee is a person other than an individual, that any of its officers, directors, partners, or its manager, has:

(1) made any false statement or given any false information in connection with an application for a license or a renewal or reinstatement of a license;

(2) violated any provisions of this act;

(3) violated any rule of the director adopted pursuant to the authority contained in this act;

(4) been convicted of a felony or any crime involving moral turpitude or illegally using, carrying, or possessing a dangerous weapon, and as a result of such conviction is under state supervision;

(5) impersonated, or permitted or aided and abetted an employee to impersonate a law enforcement officer or employee of the United States of America, or of any state or political subdivision thereof;

(6) committed or permitted any employee to commit any act, while the license was expired which would be cause for the suspension or revocation of a license, or grounds for the denial of an application for a license;

(7) willfully failed or refused to render to a client services or a report as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties; or

(8) knowingly violated, or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee.

History: En. 66-3327 by Sec. 27, Ch. 234,  
L. 1974.

**66-3328. Violation as misdemeanor.** Any person who violates any of the provisions of this act is guilty of a misdemeanor punishable by fine not to exceed five hundred dollars (\$500) or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

History: En. 66-3328 by Sec. 28, Ch. 234,  
L. 1974.

**66-3329. License—expiration and renewal.** Licenses issued under this act, and the pocket cards issued pursuant thereto, shall expire at 12 midnight on June 30 of each year if not, in each instance, renewed. To renew an unexpired license, the licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form prescribed by the director, and pay the renewal fee prescribed by this act.

History: En. 66-3329 by Sec. 29, Ch. 234,  
L. 1974.

**66-3330. Fee schedule.** The amount of fees prescribed by this act, unless otherwise fixed, is that fixed in the following schedule:

(1) An application for an original license in any classification shall be accompanied by an investigation fee of twenty-five dollars (\$25).

(2) The annual fee for an original license or renewal thereof shall be fixed by the director but shall not exceed fifty dollars (\$50).

**History:** En. 66-3330 by Sec. 30, Ch. 234,  
L. 1974.

**66-3331. Severability.** It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application.

**History:** En. 66-3331 by Sec. 31, Ch. 234,  
L. 1974.

#### CHAPTER 34—ACUPUNCTURE PRACTICE ACT

##### Section

- 66-3401. Citation of act.
- 66-3402. Legislative finding and purpose.
- 66-3403. Definitions.
- 66-3404. License required.
- 66-3405. Powers and duties of board.
- 66-3406. Application for examination—fee—requirements.
- 66-3407. Examination—scope of examination—retention and inspection of examination papers—reexamination.
- 66-3408. License—fee.
- 66-3409. Reciprocity.
- 66-3410. Term of license—renewal—fee—notice—cancellation.
- 66-3411. Refusal to issue, suspension, revocation of license—probation—notice—hearing—reinstatement.
- 66-3412. Judicial review of board decisions.
- 66-3413. Deposit of fees.
- 66-3414. Enjoining unlawful practice.
- 66-3415. Acupuncture examinations for licensed doctors of medicine, osteopathy, chiropractic, dentistry and podiatry.
- 66-3416. Violation of act—penalty.
- 66-3417. Severability clause.

**66-3401. Citation of act.** This act shall be known and may be cited as the "Acupuncture Practice Act of 1974."

**History:** En. 66-3401 by Sec. 1, Ch. 317, Title of Act  
L. 1974.

An act to provide for the regulation and licensing of persons practicing acupuncture in Montana; and providing penalties.

**66-3402. Legislative finding and purpose.** The legislature finds and declares that the practice of acupuncture in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of acupuncture and from unprofessional conduct by persons licensed to practice acupuncture.

**History:** En. 66-3402 by Sec. 2, Ch. 317,  
L. 1974.



**66-3403. Definitions.** As used in this act:

(1) The term "board" means the Montana state board of medical examiners.

(2) The term "acupuncture" means the treatment of the human body by means of mechanical, thermal or electrical stimulation effected by the insertion of solid needles.

(3) The term "acupuncturist" means a natural person licensed by the Montana state board of medical examiners to practice acupuncture.

(4) The term "school of acupuncture" means a school where acupuncture is taught that has been recognized and designated by the Montana state board of medical examiners.

History: En. 66-3403 by Sec. 3, Ch. 317,  
L. 1974.

**66-3404. License required.** From and after the effective date of this act no person may engage in the practice of acupuncture in this state unless he is licensed under the provisions of this act.

History: En. 66-3404, by Sec. 4, Ch. 317,  
L. 1974.

**66-3405. Powers and duties of board.** In addition to all other powers and duties conferred and imposed upon the board by this act, the board shall have and exercise the following powers and duties:

(1) to promulgate, under the applicable provisions of the Montana Administrative Procedure Act, (82-4201 to 82-4225) rules and regulations which it determines to be necessary to carry out the provisions of this act;

(2) to adopt a schedule of minimum educational requirements, not inconsistent with the provisions of this act;

(3) to prescribe forms for application for examination and license;

(4) to prepare and supervise examination of applicants for license to practice acupuncture;

(5) to obtain the services of professional examination agencies in lieu of its own preparation of the examinations;

(6) to issue, revoke and suspend licenses as hereinafter provided;

(7) to hold hearings, issue subpoenas, administer oaths and take testimony and proofs concerning all matters within its jurisdiction;

(8) to issue commissions to take depositions of witnesses who are sick or absent from the state; and

(9) to adopt a seal, which shall be affixed to all licenses issued by the board and other official papers.

History: En. 66-3405 by Sec. 5, Ch. 317,  
L. 1974.

**66-3406. Application for examination—fee—requirements.** (1) Each person desiring to practice acupuncture in this state shall make application for examination with the secretary of the board upon the forms and in the manner as prescribed by the board, at least thirty (30) days before the date set by the board for the commencement of the examination. An examination fee of fifty dollars (\$50) shall accompany the application.

(2) A person making application shall furnish the board evidence that he:

- (a) is at least eighteen (18) years of age;
- (b) is a citizen of the United States, or has filed a properly executed declaration of intention to become a citizen of the United States;
- (c) is of good moral character, as determined by the board; and
- (d) is the graduate of an approved school of acupuncture or has completed a course in acupuncture approved by the board.

History: En. 66-3406 by Sec. 6, Ch. 317,  
L. 1974.

**66-3407. Examination—scope of examination—retention and inspection of examination papers—reexamination.** (1) Any applicant meeting the requirements of this act shall be admitted to an assembled examination to be conducted by the board. An examination shall be held at least twice a year. The examination shall be practical in character and sufficiently thorough to test the fitness of the applicant to practice acupuncture. The examination shall be in writing, in so far as the board shall deem practicable, and shall cover such subjects as prescribed in the curriculum and taught in the schools which offer courses leading to the degree of doctor of acupuncture, master of acupuncture, master acupuncturist, or its equivalent. Demonstration of the applicant's skill in the practice of acupuncture may also be required.

(2) Examination papers of any applicant shall be retained two (2) years by the secretary of the board and may then be destroyed. While retained the examination papers shall be open to inspection only by board members, the applicant or by some person appointed by the applicant to examine them, or by a court of competent jurisdiction in a proceeding where the question of the contents of the papers is properly involved.

(3) Any applicant failing to pass his first examination before the board may, at any subsequent meeting of the board held for the purpose of examining candidates, if otherwise qualified, take subsequent examinations upon payment of the fee of twenty-five dollars (\$25) for each examination.

History: En. 66-3407 by Sec. 7, Ch. 317,  
L. 1974.

**66-3408. License—fee.** All applicants successfully passing the examination required by this act shall be registered as licensed acupuncturists in the board register and, upon the payment of a twenty dollar (\$20) license fee shall be issued a certificate of license in such form as prescribed by the board. The certificate shall bear the official seal of the board.

History: En. 66-3408 by Sec. 8, Ch. 317,  
L. 1974.

**66-3409. Reciprocity.** A license without examination may be issued by the board to any acupuncturist licensed or certified in another state where the licensing or certification requirements are substantially equivalent to

the requirements of this act, upon payment of the license fee of twenty dollars (\$20) as herein provided.

History: En. 66-3409 by Sec. 9, Ch. 317,  
L. 1974.

**66-3410. Term of license—renewal—fee—notice—cancellation.** (1) The license to practice acupuncture shall expire on December 31 of each calendar year and shall be renewed upon request of the licensee without examination. The request for renewal shall be on forms prescribed by the board and accompanied by a renewal fee of twenty dollars (\$20). The request and fee shall be in the hands of the secretary of the board not later than the expiration date of the license. Any person actively engaged in the military service of the United States and licensed to practice acupuncture as herein provided shall not be required to pay the annual renewal fee or make application for renewal until December 31 of the calendar year in which he returns from military service to civilian or inactive status.

(2) On or before December 1 of each calendar year the secretary of the board shall notify each licensee by letter, addressed to his last place of residence as the same appears on the records of the board, that his license will expire on December 31 following the date of notice unless application for renewal, accompanied by the annual renewal fee, is received by the board on or prior to that date.

(3) Immediately following December 31 of each calendar year, the secretary shall notify all licensees from whom requests for renewal, accompanied by the renewal fee, have not been received that their licenses have expired and that they will be cancelled and revoked upon the records of the board, unless a request for renewal and reinstatement, accompanied by the renewal fee and an additional fee of five dollars (\$5), shall be in the hands of the secretary prior to February 1 following the expiration date.

(4) Immediately following February 1 of each calendar year, the secretary of the board shall cancel and revoke upon its records all licenses which have not been renewed or reinstated as provided by this act, and shall notify the licensees whose licenses are so revoked of such action.

(5) Any licensee who allows his license to lapse by failing to renew or reinstate the same as herein provided, may subsequently reinstate the same upon good cause shown to the satisfaction of the board and upon payment of all annual renewal fees then accrued plus an additional fee of five dollars (\$5) for each year following the canceling of the license.

History: En. 66-3410 by Sec. 10, Ch. 317,  
L. 1974.

**66-3411. Refusal to issue, suspension, revocation of license—probation—notice—hearing—reinstatement.** (1) The board may refuse to issue or may suspend or revoke a license issued pursuant to this act for any one (1) or any combination of the following causes:

- (a) conviction of a felony or conviction of a violation of any state or federal law regulating the possession, distribution, or use of any controlled substance, as shown by a certified copy of record of the court;
- (b) being adjudicated incompetent or insane;



(c) sustaining a physical or mental disability which renders further practice dangerous;

(d) habitual drunkenness or habitual addiction to the use of a controlled substance;

(e) gross malpractice;

(f) engaging in any dishonorable, unethical, or unprofessional conduct which may deceive, defraud, or harm the public, or which is unbecoming a person licensed to practice under this act;

(g) the obtaining of or any attempt to obtain a license or practice in the profession for money or any other thing of value by fraudulent misrepresentations;

(h) advertising by means of knowingly false or deceptive statement;

(i) advertising, practicing, or attempting to practice under a name other than one's own;

(j) using any false, fraudulent, or forged statement or document, or engaging in any fraudulent, deceitful, dishonest, or immoral practice in connection with the licensing requirements of this act; or

(k) violating or attempting to violate, or assisting or abetting the violation of, or conspiring to violate any provision of this act.

(2) Any person, including any member of the board, may file a sworn complaint with the secretary of the board against any person having a license to practice acupuncture in this state, charging him with the commission of any of the offenses set forth in subsection (1) of this section, which complaint shall set forth a specification of the charges. When such complaint is filed, the secretary shall mail a copy thereof to the person so accused, at his last address of record with the board, together with a written citation of the time and place of a hearing thereon, advising him that he may be present in person, and by counsel if he so desires, to offer evidence and be heard in his defense. The time fixed for hearing shall be not less than thirty (30) days from the date of mailing the notice. The contested case procedures of the Montana Administrative Procedure Act (82-4201 to 82-4225) shall apply to the notice and hearing requirements of section 11 [66-3411] of this act, except that neither common law nor statutory rules of evidence need apply, but the board may make rules designed to exclude repetitive, redundant or irrelevant testimony.

(3) At the time and place fixed for a hearing before the board as provided in subsection (2) of this section, or at any time and place to which the matter may be continued, the board shall receive evidence upon the subject under consideration and shall accord the person against whom charges are preferred a full and fair opportunity to be heard in his defense and shall after consideration adopt a resolution finding him guilty or not guilty of the matters charged. If the board finds that the conditions referred to in subsection (1) of this section do not exist with reference to the person or if he be found not guilty, the board shall dismiss the charges or complaint, but if the board does find that the conditions referred to in subsection (1) of this section do exist and the person is found guilty, the board shall:

(a) revoke his license;

(b) suspend his right to practice for a period not exceeding one (1) year;

(c) suspend its judgment of revocation upon the terms and conditions to be determined by the board;

(d) place him on probation; or

(e) take such other action in relation to disciplining him as the board in its discretion may deem proper.

(4) The secretary of the board in all cases of revocation, suspension or probation shall enter in its records the facts of the action, and of any subsequent action of the board with respect thereto.

(5) Upon the expiration of the term of suspension, the licensee shall be reinstated by the board, provided the licensee shall furnish the board with evidence that he is then of good moral character and conduct and restored to good health and that he has not practiced acupuncture in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the licensee is then of good moral character and conduct or if not restored to good health or if the evidence shows he has practiced acupuncture in this state during the term of suspension, the board shall revoke the license at a hearing, the notice and procedure of which shall be as hereinabove provided, which revocation shall then be final and absolute.

History: En. 66-3411 by Sec. 11, Ch. 317,  
L. 1974.

**66-3412. Judicial review of board decisions.** Any person aggrieved by the final decision of the board may obtain judicial review of that decision. The judicial review procedure shall be the same as that for contested cases under the Montana Administrative Procedure Act (82-4201 to 82-4225).

History: En. 66-3412 by Sec. 12, Ch. 317,  
L. 1974.

**66-3413. Deposit of fees.** All moneys received under this act shall be deposited with the state treasurer and credited to an account to be designated by him. No money shall be paid out of the fund except upon vouchers drawn against the fund, signed and certified to by the secretary of the board. All funds so credited shall be available to the board for the payment of expenses incurred by it in the performance of its duties under this act.

History: En. 66-3413 by Sec. 13, Ch. 317,  
L. 1974.

**66-3414. Enjoining unlawful practice.** The practice of acupuncture in any way other than as defined in this act may be enjoined by the district court on petition by the board. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have so practiced, the court shall enjoin him from so practicing unless and until he has been duly licensed. Procedure in such cases shall be the same as in any other injunc-

tion suit. The remedy by injunction is in addition to criminal prosecution and punishment.

History: En. 66-3414 by Sec. 14, Ch. 317,  
L. 1974.

**66-3415. Acupuncture examinations for licensed doctors of medicine, osteopathy, chiropractic, dentistry and podiatry.** Nothing in this act shall be construed to require doctors of medicine, osteopathy, chiropractic, dentistry, and podiatry who are licensed in Montana to take further examinations in anatomy, physiology, chemistry, dermatology, diagnosis, bacteriology, materia medica, or other subjects which are or may be required for licensure in their respective professions; but no doctor of medicine, osteopathy, chiropractic, dentistry or podiatry shall practice acupuncture in this state unless and until he has completed a course and passed an examination in acupuncture as required by this act.

History: En. 66-3415 by Sec. 15, Ch. 317,  
L. 1974.

**66-3416. Violation of act—penalty.** Any person who violates any of the provisions of this act or the rules and regulations of the state board of acupuncture shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding five hundred dollars (\$500), or both.

History: En. 66-3416 by Sec. 16, Ch. 317,  
L. 1974.

**66-3417. Severability clause.** If any provision of this act, or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect any other provision or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

History: En. 66-3417 by Sec. 17, Ch. 317,  
L. 1974.



## TITLE 67—PROPERTY

### Chapter

2. Definitions and nature of property, 67-205.
16. Transfer of real property—method and effect, 67-1602.1.
18. Uniform Gifts to Minors Act, 67-1801, 67-1804, 67-1807.
20. Surveys and co-ordinates, 67-2003.
21. Sale or lease of subdivided lands, 67-2101 to 67-2103, 67-2105 to 67-2108, 67-2110, 67-2112 to 67-2114, 67-2116 to 67-2118, 67-2121 to 67-2129, 67-2135.
22. Disposition of unclaimed property, 67-2211 to 67-2226.
23. Unit Ownership Act, 67-2302 to 67-2303.6, 67-2304, 67-2305, 67-2314, 67-2317 to 67-2319, 67-2322, 67-2323, 67-2340, 67-2342 to 67-2344.

### CHAPTER 2—DEFINITIONS AND NATURE OF PROPERTY

#### Section

67-205. Brands—recording—fees.

**67-205. (6665.2) Brands—recording—fees.** An owner or prospective owner of animals in restraint or captivity is entitled, by written subscribed statement, to adopt distinctive brands or tattoo marks, not including arabic numerals and not already in known use by others, for any of the animals and to have the distinctive brands and tattoo marks recorded in his name in the office of the department of livestock, on paying a recording fee of four dollars (\$4) for each brand and for each tattoo mark. The statements shall be recorded in a suitable book to be kept for that purpose by the department of livestock. The presence of the recorded brand or recorded tattoo marks on an animal is prima facie evidence of the ownership of the animal in the person, association, or corporation in whose name the brand or tattoo mark is recorded, subject always to the right to make a transfer of title, right, or interest in, or lien on the animal.

**History:** En. Sec. 2, Ch. 97, L. 1933;  
amd. Sec. 196, Ch. 310, L. 1974.

#### Amendments

The 1974 amendment substituted “de-

partment of livestock” for “secretary of the livestock commission” in the first sentence and made minor changes in phraseology and punctuation.

### 67-208. (6668) Land.

#### Improvements on Land

Special assessments for flood control purposes under section 89-2330 are limited

to land, exclusive of improvements. In re West Great Falls Flood Control & Drainage Dist., 159 M 277, 496 P 2d 1143.

### 67-211. (6671) Appurtenances.

#### Water Rights

Water rights represented by the water stocks, the registered owner of which was the seller of land under contract for deed, were incidental and appurtenant to the land where water rights were beneficially

used on the land; contract for deed effectively conveyed beneficial ownership in water rights in absence of an express reservation or exception. *Schwend v. Jones*, — M —, 515 P 2d 89.

## CHAPTER 3—OWNERSHIP OF PROPERTY AND INTERESTS THEREIN

**67-305. (6677) When qualified.****Acquisition of Property**

Where family-owned dairy farm corporation sold its lessors' interest in half of its herd to third party who then leased cattle back to corporation, the corporation, to the extent of the lease agreement, continued to own the cattle and, as long

as operation of dairy farm was uninterrupted and not abandoned, there was no "acquisition" of the farm under milk control board regulations. *Medo-Land Dairies v. Montana Milk Control Board*, 157 M 215, 483 P 2d 705.

## CHAPTER 6—SERVITUDES

**67-611. (6679) How extinguished.****Abandonment and Reconveyance of Easement**

Easement acquired for use of land as a public park adjoining highway was abandoned by state's abandonment of the high-

way and abandonment of its maintenance and dominion over the park area. *Park County Rod & Gun Club v. Department of Highways*, — M —, 517 P 2d 352.

## CHAPTER 7—RIGHTS INCIDENTAL TO OWNERSHIP OF REAL PROPERTY

**67-710. (6769) Terms of lease may be changed by notice.****Intent**

Intent of this section is to inform tenants of rent increase, not to gain jurisdiction over them. *Walker v. Tschache*, — M —, 510 P 2d 9.

**Notice Served Upon Tenant**

Notice requirement of this section did not mean jurisdictional service, and was fulfilled when landlord placed timely rent increase notices in addressed envelopes in tenants' mailboxes. *Walker v. Tschache*, — M —, 510 P 2d 9.

## CHAPTER 8—OBLIGATIONS INCIDENTAL TO THE OWNERSHIP OF REAL PROPERTY—MONUMENTS AND FENCES

**67-808. Restriction on liability to gratuitous licensee for recreation.****Government Licensee**

Notwithstanding that the agreement between power company and United States government used word "licensee," power company qualified as "landowner or tenant," as used in this section, since legal effect of instrument was to create lease; therefore, power company could properly use this section as an affirmative defense in personal injury action. *State ex rel. Tucker v. District Court*, 155 M 202, 468 P 2d 773.

**Property**

In action for personal injuries resulting from fall from private train being operated on defendant's property, trial court properly overruled plaintiff's motion to strike affirmative defense based on this section on ground that this section applies only to injuries caused by real estate, since, under section 19-103, "property," as used in this section, includes both real and personal property. *State ex rel. Tucker v. District Court*, 155 M 202, 468 P 2d 773.

## CHAPTER 15—ACQUISITION OF PROPERTY BY TRANSFER—GRANTS AND THEIR INTERPRETATION

**67-1511. (6845) Delivery to grantee is necessarily absolute.****Unconditional Delivery and Acceptance**

Informal written instrument, indicating that donor wished to pay money on demand but that it could be collected against his estate if not demanded or paid sooner, was unconditionally delivered and ac-

cepted when accepted by donee, even though no demand for payment was made during donor's lifetime. *Faith Lutheran Retirement Home v. Veis*, 156 M 38, 473 P 2d 503.

**67-1516. (6850) Limitations—how controlled.****Granting Clause**

Granting clause which referred specifically to grantee's right to use the land as a public park constituted a clear and dis-

tingent limitation; interest conveyed was an easement. *Park County Rod & Gun Club v. Department of Highways*, — M —, 517 P 2d 352.

**67-1523. (6857) Incidents.****Water Rights**

Water rights represented by the water stocks, the registered owner of which was the seller of land under contract for deed, were incidental and appurtenant to the land where water rights were beneficially

used on the land; contract for deed effectively conveyed beneficial ownership in water rights in absence of an express reservation or exception. *Schwend v. Jones*, — M —, 515 P 2d 89.

**CHAPTER 16—TRANSFER OF REAL PROPERTY—METHOD AND EFFECT****Section**

67-1602.1. Joint tenancy created by direct conveyance.

**67-1602.1. Joint tenancy created by direct conveyance.** A joint tenancy as to any interest in real property may be established by the owner thereof, by designating in the instrument of conveyance or transfer, the names of such joint tenants including his own, without the necessity of any transfer or conveyance to or through a third person.

All joint tenancies created in this manner prior to July 1, 1963, are sufficient in law to create a joint tenancy.

**History:** En. Sec. 1, Ch. 208, L. 1963; amd. Sec. 1, Ch. 9, L. 1971.

paragraph, validating all joint tenancies created by direct conveyance prior to July 1, 1963.

**Amendments**

The 1971 amendment added the second

**67-1607. (6865) What easements pass with property.****Implied Easement**

Ample room for alternative ingress and egress to contiguous county road precluded finding of implied easement on conveyance of part of a tract, in spite of

permissive use of access road by several succeeding property owners for twenty-four years. *Poepping v. Neil*, 159 M 488, 499 P 2d 319.

**CHAPTER 17—TRANSFER OF PERSONAL PROPERTY—MODES OF TRANSFER****67-1706. (6882) Gifts defined.****Donative Intent**

Evidence that donor was eighty-eight years of age, suffered from cerebral arteriosclerosis and was disoriented and forgetful, was more susceptible to suggestion than the average healthy person, that the donee was a close friend and blood relative of the donor, and that the donee had

written a letter suggesting that the donor put someone else's name on her savings account, was sufficient to void purported gift effected by transfer of donor's savings account to donor and donee jointly due to donor's mental incapacity to form the requisite intent. *Patterson v. Halterman*, — M —, 505 P 2d 905.

**CHAPTER 18—UNIFORM GIFTS TO MINORS ACT****Section**

67-1801. Definitions.

67-1804. Duties and powers of custodian.

67-1807. Resignation, death or removal of custodian—bond—designation of successor custodian.



**67-1801. Definitions.** In this act, unless the context otherwise requires:

(a) An "adult" is a person who has attained the age of eighteen (18) years.

(b) to (e). \* \* \* [Same as parent volume.]

(f) A "custodian" is a person so designated in a manner prescribed in this act; the term includes a successor custodian.

(g) A "financial institution" is a bank, a federal savings and loan association, a savings institution chartered and supervised as a savings and loan or similar institution under federal laws or the laws of a state or a federal credit union or a credit union chartered and supervised under the laws of a state; a "domestic financial institution" is one chartered and supervised under the laws of this state or chartered and supervised under federal law and having its principal office in this state: an "insured financial institution" is one, deposits (including a savings, share, certificate or deposit account) in which are, in whole or in part, insured by the federal deposit insurance corporation, by the federal savings and loan insurance corporation, or by a deposit insurance fund approved by this state.

(h) to (l). \* \* \* [Same as parent volume.]

(m) A "minor" is a person who has not attained the age of eighteen (18) years.

(n) to (p). \* \* \* [Same as parent volume.]

**History:** En. Sec. 1, Ch. 245, L. 1957;  
amd. Sec. 1, Ch. 234, L. 1967; amd. Sec.  
11, Ch. 423, L. 1971.

#### Amendments

The 1971 amendment reduced the age specified in subdivisions (a) and (m) from 21 to 18 years, and made minor changes in punctuation.

**67-1804. Duties and powers of custodian.** (a) to (c). \* \* \* [Same as parent volume.]

(d) To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of eighteen (18) years, or if the minor dies before attaining the age of eighteen (18) years, he shall thereupon deliver or pay it over to the estate of the minor.

(e) to (j). \* \* \* [Same as parent volume.]

**History:** En. Sec. 4, Ch. 245, L. 1957;  
amd. Sec. 4, Ch. 234, L. 1967; amd. Sec.  
12, Ch. 423, L. 1971.

#### Amendments

The 1971 amendment reduced the age specified in subsection (d) from 21 to 18 years.

**67-1807. Resignation, death or removal of custodian—bond—designation of successor custodian.** (a). \* \* \* [Same as parent volume.]

(b) The designation of a successor custodian as provided in subsection (a) takes effect as to each item of the custodial property when the custodian resigns, dies or becomes legally incapacitated and the custodian or his legal representative:

(1) causes the item if it is a security which is custodial property and in registered form or a life insurance policy or annuity contract, to be registered, with the issuing insurance company in the case of a life insur-

ance policy or annuity contract, in the name of the successor custodian followed, in substance, by the words: "as custodian for ..... (name of minor) under the Montana Uniform Gifts to Minors Act"; and

(2). \* \* \* [Same as parent volume.]

(c). \* \* \* [Same as parent volume.]

(d) If a person designated as custodian or as successor custodian by the custodian as provided in subsection (a) is not eligible, dies or becomes legally incapacitated before the minor attains the age of eighteen (18) years and if the minor has a guardian, the guardian of the minor shall be successor custodian. If the minor has no guardian and if no successor custodian who is eligible and has not died or become legally incapacitated has been designated as provided in subsection (a), a donor, his legal representative of the custodian or an adult member of the minor's family may petition the court for the designation of a successor custodian.

(e) and (f). \* \* \* [Same as parent volume.]

History: En. Sec. 7, Ch. 245, L. 1957;  
amd. Sec. 6, Ch. 234, L. 1967; amd. Sec.  
13, Ch. 423, L. 1971.

#### Amendments

The 1971 amendment reduced the age specified in subsection (d) from 21 to 18 years.

#### Compiler's Notes

The compiler has inserted the bracketed word in subdivision (b)(1).

## CHAPTER 19—PRINCIPAL AND INCOME ACT

### 67-1901. Definitions.

NOTE.—Uniform State Law. The following states have adopted a Revised Uniform Principal and Income Act: Cali-

fornia, Indiana, Kansas, Minnesota, Mississippi, Nevada, New Mexico, North Dakota.

## CHAPTER 20—SURVEYS AND CO-ORDINATES

Section

67-2003. Definitions.

**67-2003. Definitions.** Except where the context indicates a different meaning, terms used in this act shall be defined as follows:

(1) to (7) \* \* \* [Same as parent volume.]

(8) A "registered surveyor" is a surveyor who is registered to practice land surveying under Title 66, chapter 23, and has a paid up license for that calendar year, or who is authorized under Title 66, chapter 23, to practice land surveying.

(9) The "board" is the board of professional engineers and land surveyors, provided for in section 82A-1602(11).

History: En. Sec. 3, Ch. 202, L. 1963;  
amd. Sec. 320, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "Title 66, Chapter 23" in subdivision (8) for "Montana Professional Engineers Regis-

tration Act"; substituted "board of professional engineers and land surveyors" in subdivision (9) for "state board of registration for professional engineers and land surveyors"; and added "provided for in section 82A-1602(11)" to subdivision (9).

## CHAPTER 21—SALE OR LEASE OF SUBDIVIDED LANDS

## Section

- 67-2101. Definition of terms.
- 67-2102. Rules.
- 67-2103. Notice of intention to offer subdivided lands—contents of notice.
- 67-2105. Additional information required by board.
- 67-2106. Fee for filing of questionnaire—disposition of fees.
- 67-2107. Investigation of subdivisions—powers of board.
- 67-2108. Findings not to be used in advertising.
- 67-2110. Required provisions for protection of purchasers and lessees.
- 67-2112. Notice of multiple sales or leases to one purchaser or lessee.
- 67-2113. Inspection of records by board—notice of change of address or change of depository.
- 67-2114. Orders to desist and refrain—prohibition of sales and leases—hearings.
- 67-2116. Misdemeanors enumerated.
- 67-2117. Definitions.
- 67-2118. Board.
- 67-2121. Application for registration.
- 67-2122. Public offering statement.
- 67-2123. Inquiry and examination.
- 67-2124. Notice of filing and registration.
- 67-2125. Annual report.
- 67-2126. General powers and duties.
- 67-2127. Investigations and proceedings.
- 67-2128. Cease and desist orders.
- 67-2129. Revocation.
- 67-2135. Service of process.

**67-2101. Definition of terms.** Unless the context requires otherwise, in this act:

(1) "Subdivision" and "subdivided lands" mean any tract of land which is hereafter divided into five (5) or more parcels, a parcel of which is less than five (5) acres in size, and which is offered for sale or lease outside the state of Montana.

(2) "Board" means the board of real estate, provided for in section 82A-1602.23.

(3) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

**History:** En. Sec. 1, Ch. 191, L. 1963;  
amd. Sec. 321, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment added subdivisions (2) and (3); and made minor changes in phraseology and style.

**67-2102. Rules.** The board may adopt rules necessary for the enforcement of this act.

**History:** En. Sec. 2, Ch. 191, L. 1963;  
amd. Sec. 322, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "board" for "state real estate commissioner"; and made minor changes in phraseology.

**67-2103. Notice of intention to offer subdivided lands—contents of notice.** (1) Prior to the time when subdivided lands are to be offered for sale or lease outside the state of Montana, the owner, his agent or subdivider shall notify the board in writing of his intention to sell or lease such offering.

(2) The notice of intention shall contain the following information:

(a) The name and address of the owner;



- (b) The name and address of the subdivider;
- (c) The legal description and area of lands, together with a map showing the layout proposed and relation to existing streets or roads;
- (d) A true statement of the conditions of the title to the land, particularly including all encumbrances thereon;
- (e) A true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any and all forms of conveyance intended to be used;
- (f) A true statement of the provision for legal access, sewage disposal, and public utilities in the proposed subdivision, including water, electricity, gas, and telephone facilities;
- (g) Copies of any advertising, information, promotion brochures or similar material depicting the existing property or as it is to exist, which might cause or tend to induce purchase of the property, or an interest therein, when the material is or might be circulated outside of this state;
- (h) Such other information as the owner, his agent, or subdivider, may desire to present.

**History:** En. Sec. 3, Ch. 191, L. 1963; amd. Sec. 323, Ch. 350, L. 1974.

in subsection (1) for "state real estate commissioner"; and made minor changes in phraseology and punctuation.

**Amendments**

The 1974 amendment substituted "board"

**67-2105. Additional information required by board.** After receiving the notice of intention, the board may require additional information concerning the project as it considers necessary, for which it may prepare a questionnaire for the owner, his agent or subdivider, to answer.

**History:** En. Sec. 5, Ch. 191, L. 1963; amd. Sec. 324, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "board" for "commissioner"; and made minor changes in phraseology.

**67-2106. Fee for filing of questionnaire—disposition of fees.** When the questionnaire provided for in section 67-2105 is filed, the person filing the questionnaire shall pay to the department a filing fee of one hundred dollars (\$100). Fees and charges provided for by this act shall be paid to the department and by it deposited with the state treasurer. The state treasurer shall place five per cent (5%) of these fees and charges in the general fund and ninety-five per cent (95%) of these fees and charges in the earmarked revenue fund. Fees deposited in the earmarked revenue fund may be used to pay claims for expense incurred in the administration of this act when the claims have been approved as provided by law.

**History:** En. Sec. 6, Ch. 191, L. 1963; amd. Sec. 325, Ch. 350, L. 1974.

**Amendments**

The 1974 amendment substituted "department" for "commissioner"; and made minor changes in phraseology.

**67-2107. Investigation of subdivisions—powers of board.** The board may investigate any subdivision being offered for sale or lease under the provisions of this act. For the purpose of an investigation, the board may:

(1) Use and rely upon any relevant information or data concerning a subdivision obtained by it from the federal housing administration, the United States veterans administration, or any other agency having comparable duties and functions in relation to subdivisions or property therein.

(2) Require reports prepared by competent authorities as to any hazard to which the subdivision may be subject or any factor which might affect the value or utility of lots or parcels within the subdivision.

(3) Require evidence of compliance with the requirements of appropriate authorities.

(4) Require an inspection of the subdivision to be made.

**History:** En. Sec. 7, Ch. 191, L. 1963; for "state real estate commissioner" and  
amd. Sec. 326, Ch. 350, L. 1974. "commissioner" in the first two sentences;

**Amendments**

The 1974 amendment substituted "board"

and made minor changes in phraseology and style.

**67-2108. Findings not to be used in advertising.** It is unlawful for any person to incorporate in any advertising material or use for any advertising purposes the results or findings of the board as provided for in this act.

**History:** En. Sec. 8, Ch. 191, L. 1963; **Amendments**

amd. Sec. 327, Ch. 350, L. 1974.

The 1974 amendment substituted "board" for "commissioner" and made a minor change in phraseology.

**67-2110. Required provisions for protection of purchasers and lessees.** It is unlawful for the owner or subdivider to offer to sell or lease or to sell or lease lots or parcels within a subdivision to persons residing out of the state of Montana unless one of the following conditions is complied with:

(1) All sums paid or advanced by purchasers shall be impounded in an escrow or other depository acceptable to the board until: (a) The title or other interest contracted for whether it be title of record, equitable or other interest, is delivered to such purchaser or lessee and until: (b) A proper release is obtained from any such blanket encumbrance, or: (c) Either the owner, subdivider, purchaser or lessee defaults in his undertaking, in which event the moneys shall be paid to the party who is not in default and is entitled thereto.

(2) The title to the subdivision is to be held in trust under an agreement of trust acceptable to the board until a proper release from such blanket encumbrance is obtained and title or other interest contracted for is delivered to such purchaser or lessee.

(3) A bond in the amount of twenty-five hundred dollars (\$2,500) to the state of Montana is furnished to the board for the benefit and protection of purchasers or lessees of such lots or parcels, in such amount and subject to the terms as may be approved by the board, which shall provide for the return of moneys paid or advanced by any purchaser or lessee, for or on account of purchase or lease of any such lot or parcel if the interest contracted for is not delivered or a proper release from such blanket encumbrance is not obtained; however, if the purchaser or lessee, by reason of default, is not entitled to the return of the moneys, or any portion there-

of, then the bond shall be exonerated to the extent of the amount of the moneys to which such purchaser or lessee is not entitled.

**History:** En. Sec. 10, Ch. 191, L. 1963; for "state real estate commissioner" and  
amd. Sec. 328, Ch. 350, L. 1974. "commissioner" throughout the section;  
and made minor changes in phraseology,  
punctuation and style.

#### **Amendments**

The 1974 amendment substituted "board"

### **67-2112. Notice of multiple sales or leases to one purchaser or lessee.**

When five or more lots or parcels within a subdivision subject to the provisions of this act, are optioned, leased, or sold to another, or when an interest therein is acquired by one owner, lessee or optionee, the board shall be notified by the parties to the transaction.

**History:** En. Sec. 12, Ch. 191, L. 1963;  
amd. Sec. 329, Ch. 350, L. 1974.

#### **Amendments**

The 1974 amendment substituted "board"  
for "state real estate commissioner"; and  
made minor changes in punctuation.

**67-2113. Inspection of records by board—notice of change of address or change of depository.** Records of the sale or lease of parcels within a subdivision subject to the provisions of this act, shall be subject to inspection by the board and the board shall be notified of any change of address affecting the location of the owner's, subdivider's or agent's records or of any change in depository for the impounding of purchasers' money in accordance with the provisions herein.

**History:** En. Sec. 13, Ch. 191, L. 1963;  
amd. Sec. 330, Ch. 350, L. 1974.

#### **Amendments**

The 1974 amendment substituted "board"  
for "state real estate commissioner" and  
"commissioner."

**67-2114. Orders to desist and refrain—prohibition of sales and leases—hearings.** When in the opinion of the board a person has or is violating, or is about to violate, any of the provisions of this act, the board may order the person to desist and refrain from doing so, or, if an examination of the project shows that the sale or lease would constitute misrepresentation to, or deceit or fraud of, the purchasers or lessees of lots or parcels in a subdivision, the board may issue an order prohibiting the sale or lease, or either, of the property in this state. If, after such an order is made, a request for a hearing by the board is filed in writing and a hearing is not held within sixty (60) days thereafter, the order is rescinded.

**History:** En. Sec. 14, Ch. 191, L. 1963;  
amd. Sec. 331, Ch. 350, L. 1974.

"commissioner" throughout the section; deleted a second paragraph which stated that hearings are to be held, as provided under section 66-1917; and made minor changes in phraseology.

#### **Amendments**

The 1974 amendment substituted "board"  
for "state real estate commissioner" and

**67-2116. Misdemeanors enumerated.** The following acts are misdemeanors:

(1) The willful violation or failure to comply with any of the provisions of this act;

(2) The willful violation, failure, omission or neglect to obey, observe or comply with any order, permit, decision, demand or requirement of the board;



(3) The offering for sale or lease as an agent, salesman, or broker for a subdivider, developer, or owner of subdivided lands or a subdivision, wherever situated, which is being offered for sale outside the state of Montana without first complying with the provisions of this act;

(4) The advertising for sale or lease in this state of a parcel in an out-of-state subdivision or in any other manner aiding an owner, subdivider, or developer of an out-of-state subdivision who has not complied with the provisions of this act, to offer within this state subdivided lands.

**History:** En. Sec. 16, Ch. 191, L. 1963; for "state real estate commissioner" in amd. Sec. 332, Ch. 350, L. 1974. subdivision (2); and made minor changes in phraseology, punctuation and style.

#### **Amendments**

The 1974 amendment substituted "board"

**67-2117. Definitions.** When used in this act, unless the context otherwise requires:

(1) "Disposition" includes sale, lease, assignment, or any other transaction concerning a subdivision, if undertaken for gain or profit;

(2) "Offer" includes every inducement, solicitation, or attempt to encourage a person to acquire an interest in land, if undertaken for gain or profit;

(3) "Person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership unincorporated association, two (2) or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity;

(4) "Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land;

(5) "Subdivider" means any owner of subdivided land who offers it for disposition or the principal agent of an inactive owner;

(6) "Subdivision" and "subdivided lands" mean any land which is divided or is proposed to be divided for the purpose of disposition into five (5) or more lots, parcels, units, or interests and also includes any land whether contiguous or not if five (5) or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale.

(7) "Board" means the board of real estate, provided for in section 82A-1602.23.

(8) "Chairman" means the chairman of the board of real estate.

(9) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

**History:** En. Sec. 1, Ch. 97, L. 1969; **Amendments**  
amd. Sec. 333, Ch. 350, L. 1974.

The 1974 amendment added subdivisions (7) through (9); and made minor changes in style.

**67-2118. Board.** This act shall be administered by the board. The board shall charge a fee, not to exceed five hundred dollars (\$500) for each application for registration of subdivided lands received in accordance with this act, which shall be paid into the earmarked revenue fund to the

credit of the board and is hereby appropriated for the purposes of carrying out the provisions of this act, subject to section 82A-1603(6). All expenditures of the funds by the board under the provisions of this act shall be certified and approved by the board and paid by the appropriate state officials. Payment shall be made upon warrants appropriately drawn out of the proper funds. The department shall provide a system of accounting which shall show the amount of money received therefor, and also an itemized statement of expenses in connection therewith. The board may make orders concerning the disbursement of the moneys in the earmarked revenue fund, including the payment of compensation and expenses of board members.

**History:** En. Sec. 2, Ch. 97, L. 1969; amd. Sec. 334, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "board" for "Montana real estate commission" and "agency" throughout the section; inserted

"subject to section 82A-1603(6)" in the second sentence; substituted "department" for "agency" in the next-to-last sentence; deleted "its employees" after "compensation and expenses of" in the last sentence; and made minor changes in phraseology and punctuation.

**67-2121. Application for registration.** (1) The application for registration of subdivided lands shall be filed with the department as prescribed by the board's rules and shall contain the following documents and information:

(a) An irrevocable appointment of the department to receive service of any lawful process in any noncriminal proceeding arising under this act against the applicant or his personal representative;

(b) A legal description of the subdivided lands offered for registration, together with a map showing the division proposed or made, the dimensions of the lots, parcels, units, or interests and the relation of the subdivided lands to existing streets, roads, and other off-site improvements;

(c) The states or jurisdictions in which an application for registration or similar document has been filed and any adverse order, judgment, or decree entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by any court;

(d) The applicant's name and address, and the form, date, and jurisdiction of organization; and the address of each of its offices in this state;

(e) The name, address, and principal occupation for the past five (5) years of every director and officer of the applicant or person occupying a similar status or performing similar functions; the extent and nature of his interest in the applicant or the subdivided lands as of a specified date within thirty (30) days of the filing of the application;

(f) A statement, in a form acceptable to the board, of the condition of the title to the subdivided lands including encumbrances as of a specified date within thirty (30) days of the date of application by a title opinion of an attorney licensed to practice in this state, not a salaried employee, officer, or director of the applicant or owner, or by other evidence of title acceptable to the board;

(g) Copies of the instruments which will be delivered to a purchaser to evidence his interest in the subdivided lands and of the contracts and other agreements which a purchaser will be required to agree to or sign;

(h) Copies of the instruments by which the interest in the subdivided lands was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with data as to recording;

(i) If there is a lien or encumbrance affecting more than one (1) lot, parcel, unit, or interest a statement of the consequences for a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;

(j) Copies of instruments creating easements, restrictions, or other encumbrances, affecting the subdivided lands;

(k) A statement of the zoning and other governmental regulations affecting the use of the subdivided lands and also of any existing tax and existing or proposed special taxes or assessments which affect the subdivided lands;

(l) A statement of the existing provisions for access, sewage, disposal, water, and other public utilities, in the subdivision; a statement of the improvements to be installed; the schedule for their completion; and a statement as to the provisions for improvement maintenance;

(m) A narrative description of the promotional plan for the disposition of the subdivided lands together with copies of all advertising material which has been prepared for public distribution by any means of communication;

(n) The proposed public offering statement;

(o) Any other information, including any current financial statement, which the board by its rules requires for the protection of purchasers.

(2) If the subdivider registers additional subdivided lands to be offered for disposition, he may consolidate the subsequent registration with any earlier registration offering subdivided lands for disposition under the same promotional plan.

(3) The subdivider shall immediately report any material changes in the information contained in an application for registration.

**History:** En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment inserted "with the department" after "shall be filed" in the

first sentence; substituted "board's" for "agency's" and "board" for "agency" throughout the section; substituted "department" for "agency" in subdivision (1)(a); and made minor changes in phraseology, punctuation and style.

**67-2122. Public offering statement.** (1) A public offering statement shall disclose fully and accurately the physical characteristics of the subdivided lands offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the subdivided lands. The proposed public offering statement submitted to the department shall be in a form prescribed by the board's rules and shall include the following:

(a) The name and principal address of the subdivider;

(b) A general description of the subdivided lands stating the total number of lots, parcels, units, or interests in the offering;



(c) The significant terms of any encumbrances, easements, liens, and restrictions, including zoning and other regulations affecting the subdivided lands and each unit or lot, and a statement of all existing taxes and existing or proposed special taxes or assessments which affect the subdivided lands;

(d) A statement of the use for which the property is offered;

(e) Information concerning improvements, including streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities, and customary utilities, and the estimated cost, date of completion, and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any interest in subdivided lands;

(f) Additional information required by the board to assure full and fair disclosure to prospective purchasers.

(2) The public offering statement shall not be used for any promotional purposes before registration of the subdivided lands and afterwards only if it is used in its entirety. No person may advertise or represent that the board approves or recommends the subdivided lands or disposition thereof. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the board requires it.

(3) The board may require the subdivider to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers. No change in the substance of the promotional plan or plan of disposition or development of the subdivision may be made after registration without notifying the board and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.

**History:** En. Sec. 6, Ch. 97, L. 1969; sentence of subsection (1) for "submitted to the agency"; substituted "board" for "agency" throughout the remainder of the section; and made minor changes in phraseology and style.

#### Amendments

The 1974 amendment substituted "submitted to the department" in the second

**67-2123. Inquiry and examination.** On receipt of an application for registration in proper form by the department, the board shall forthwith initiate an examination to determine that:

(1) The subdivider can convey or cause to be conveyed the interest in subdivided lands offered for disposition if the purchaser complies with the terms of the offer, and when appropriate, that release clauses, conveyances in trust, or other safeguards have been provided;

(2) There is reasonable assurance that all proposed improvements will be completed as represented;

(3) The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the board in its rules and afford full and fair disclosure;

(4) The subdivider has not, or if a corporation, its officers, directors, and principals have not, been convicted of a crime involving land disposi-

tions or any aspect of the land sales business in this state, the United States, or any other state or foreign country within the past ten (10) years and has not been subject to any injunction or administrative order entered by any authority within the past ten (10) years restraining a false or misleading promotional plan involving land dispositions;

(5) The public offering statement requirements of this act have been satisfied.

**History:** En. Sec. 7, Ch. 97, L. 1969; amd. Sec. 337, Ch. 350, L. 1974.

#### **Amendments**

The 1974 amendment inserted "by the

department" after "form" in the first sentence; substituted "board" for "agency" in the first sentence and in subdivision (3); and made minor changes in phraseology and style.

**67-2124. Notice of filing and registration.** (1) On receipt of the application for registration in proper form, the department shall issue a notice of filing to the applicant. Within ninety (90) days from the date of the notice of filing, the board shall enter an order registering the subdivided lands or rejecting the registration. If no order of rejection is entered within ninety (90) days from the date of notice of filing, the land shall be considered registered unless the applicant has consented in writing to a delay.

(2) If the board affirmatively determines, upon inquiry and examination, that the requirements of section 67-2123 have been met, it shall enter an order registering the subdivided lands and shall designate the form of the public offering statement.

(3) If the board determines upon inquiry and examination that any of the requirements of section 67-2123 has not been met, it shall notify the applicant that the application for registration must be corrected in the particulars specified within ten (10) days. If the requirements are not met within the time allowed the board shall enter an order rejecting the registration, which shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for twenty (20) days, during which time the applicant may petition for reconsideration and is entitled to a hearing.

(4) No subdivided lands may be registered or considered registered until the subdivider has filed a bond with the department, executed by a surety company authorized to do business in this state on a form approved by the board, and in such amount as the board shall deem necessary to protect purchasers from damages arising out of violation of any provision of the Revised Codes of Montana, 1947, or any rule or regulation promulgated in furtherance thereof, when the volume of business of the subdivider and other related factors are taken into consideration, but in no event less than fifty thousand dollars (\$50,000).

**History:** En. Sec. 8, Ch. 97, L. 1969; amd. Sec. 1, Ch. 110, L. 1974; amd. Sec. 338, Ch. 350, L. 1974.

conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### **Compiler's Notes**

This section was amended twice in 1974, once by Ch. 110 and once by Ch. 350. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to

#### **Amendments**

Chapter 110, Laws of 1974, substituted in subsection (4) "and in such amount as the board shall deem necessary \* \* \* in no event less than fifty thousand dollars (\$50,000)" for "conditioned that the sub-

divider shall pay, to the extent of ten thousand dollars (\$10,000) for each occurrence, any judgment recovered against him for loss or damage to any person arising out of the sale or disposition in Montana of any subdivided lands situate out-of-state"; and made minor changes in phraseology.

Chapter 350, Laws of 1974, substituted "department shall issue" in the first sentence of subsection (1) for "agency shall issue"; substituted "board" for "agency"

throughout the section; substituted "filed a bond with the department" in the first sentence of subsection (4) for "filed a bond with the agency"; and made minor changes in phraseology and style.

#### Effective Date

Section 2 of Ch. 110, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

**67-2125. Annual report.** (1) Within thirty (30) days after each annual anniversary of an order registering subdivided lands, the subdivider shall file a report with the department in the form prescribed by the rules of the board. The report shall reflect any material changes in information contained in the original application for registration.

(2) The board may permit the filing of annual reports within thirty (30) days after the anniversary date of the consolidated registration instead of the anniversary date of the original registration.

**History:** En. Sec. 9, Ch. 97, L. 1969; amd. Sec. 339, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment inserted "with the

department" after "file a report" in the first sentence; substituted "board" for "agency" in two places; and made minor changes in style.

**67-2126. General powers and duties.** (1) In the administration of this act, the board shall have all of the powers and duties as stated in subsections (2), (3) and (4) of section 66-1927. The board shall adopt reasonable rules relating to the administration of this act, but not inconsistent therewith, which may be amended or repealed. The rules shall include but need not be limited to:

(a) Provisions for advertising standards to assure full and fair disclosure;

(b) Provisions for escrow or trust agreements or other means reasonable to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for;

(c) Provisions for operating procedures; and,

(d) Other rules necessary and proper to accomplish the purpose of this act.

(2) The board by rule or order, after reasonable notice and hearing, may require the filing of advertising material relating to subdivided lands prior to its distribution.

(3) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this act or a rule or order hereunder, the board, with or without prior administrative proceedings, may bring an action in any district court of this state to enjoin the acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver or conservator



may be appointed. The board is not required to post a bond in any court proceedings.

(4) The board may intervene in a suit involving subdivided lands. In any suit by or against a subdivider involving subdivided lands, the subdivider promptly shall furnish the department notice of the suit and copies of all pleadings.

(5) The board may:

(a) Accept registrations filed in other states or with the federal government;

(b) Contract with similar agencies in this state or other jurisdictions to perform investigative functions;

(c) Accept grants-in-aid from any source.

(6) The board shall co-operate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules and common administrative practices.

(7) The board may exempt a subdivision of twenty-five (25) or fewer lots, parcels, units, or interests from the provisions of this act if it determines that the plan of promotion and disposition is primarily directed to persons in the local community in which the subdivision is situated.

History: En. Sec. 10, Ch. 97, L. 1969; for "agency" throughout the section; substituted "department" for "agency" in the second sentence of subsection (4); and  
amd. Sec. 340, Ch. 350, L. 1974. made minor changes in phraseology and style.

#### Amendments

The 1974 amendment substituted "board"

for "agency" throughout the section; substituted "department" for "agency" in the second sentence of subsection (4); and made minor changes in phraseology and style.

### 67-2127. Investigations and proceedings. (1) The board may:

(a) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this act or any rule or order hereunder or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder;

(b) Require or permit any person to file a statement in writing, under oath or otherwise as the board determines, as to all the facts and circumstances concerning the matter to be investigated.

(2) For the purpose of any investigation or proceeding under this act, the board or any officer designated by rule may administer oaths or affirmations, and upon its own motion or upon request of any party may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge or relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

(3) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the board may apply to any district court of this state for an order compelling compliance.

(4) Any person directly affected by any ruling, determination, or decision of the board or any officer thereof, may appeal to the board for hearing

and review by serving written notice of appeal upon the chairman within fifteen (15) days after such rule, determination or decision is mailed to, or served upon, the person. Notice of appeal shall state specifically the matters that the appellant desires reviewed, but shall not act as a stay unless otherwise provided by this act. Upon receipt of notice of appeal, the chairman shall serve upon the appellant notice of time and place of said hearing not less than fifteen (15) days prior to the date of hearing, to be held in the offices of the department in Helena, Montana, or elsewhere as the chairman shall order. The board is not bound by any laws of evidence of this state. Four (4) members of the board shall constitute a quorum, one of whom must be the chairman. No member of the board shall hear any matter in which he has a personal interest, nor shall he represent any person or witness at the hearing. Any party to the proceedings may challenge any board member in writing, served upon the chairman of the board five (5) days in advance of any scheduled appeal hearing, stating the reasons therefor, and if the board shall find merit in the challenge, it shall disqualify the challenged member. If disqualification reduces the board membership to less than four (4), the remaining members shall appoint disinterested people to fill the vacancies to provide a four-man hearing board. The board may postpone or continue a hearing from time to time as it considers necessary. The decision of any three (3) board members shall constitute the decision of the board on any issue presented for its decision. If the appellant or his representative fails to appear at the hearing after due notice, and good cause for continuance is not shown, the board shall render its decision upon the evidence presented to it. The board shall have continuing jurisdiction over all matters heard by it, to examine additional evidence, or to hear additional testimony, and to revise, modify, alter, amend or reverse all orders, demands, findings and decisions made by it at any time and shall not lose jurisdiction until jurisdiction has been taken by a court of competent jurisdiction in a proceeding filed in such court.

**History:** En. Sec. 11, Ch. 97, L. 1969; amd. Sec. 341, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "board" for "agency" in subsection (1) through the first sentence of subsection (4); deleted "or employee" after "any officer" in the first sentence of subsection (4); substituted "board" for "Montana real estate commission" before "for hearing and review" in the first sentence of subsection (4); substituted "department" for "com-

mission" in the third sentence of subsection (4); substituted "board" for "commission" elsewhere in subsection (4); deleted four sentences from subsection (4) relating to procedure for hearings before the former commission; deleted a sentence from subsection (4) relating to written decisions signed by the commissioners; deleted a sentence from subsection (4) relating to distributing and filing copies of the commission's decisions; and made minor changes in phraseology, punctuation and style.

**67-2128. Cease and desist orders.** (1) If the board determines after notice and hearing that a person has:

- (a) Violated any provision of this act;
- (b) Directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of an interest in subdivided lands;
- (c) Made any substantial change in the plan of disposition and development of the subdivided lands subsequent to the order of registration without obtaining prior written approval from the board;

(d) Disposed of any subdivided lands which have not been registered with the board; or

(e) Violated any lawful order or rule of the board; it may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the board will carry out the purposes of this act.

(2) If the board makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the board whenever possible by telephone or otherwise shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held within twenty (20) days to determine whether or not it becomes permanent.

History: En. Sec. 12, Ch. 97, L. 1969;  
amd. Sec. 342, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "board" for "agency" throughout the section; and made minor changes in style.

**67-2129. Revocation.** (1) A registration may be revoked after notice and hearing upon a written finding of fact that the subdivider has:

(a) Failed to comply with the terms of a cease and desist order;

(b) Been convicted in any court subsequent to the filing of the application for registration of a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;

(c) Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of subdivision purchasers;

(d) Failed faithfully to perform any stipulation or agreement made with the board as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement; or

(e) Made intentional misrepresentations or concealed material facts in an application for registration. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(2) If the board finds after notice and hearing that the subdivider has been guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead.

History: En. Sec. 13, Ch. 97, L. 1969;  
amd. Sec. 343, Ch. 350, L. 1974.

for "agency" in subdivision (1)(d) and subsection (2); and made minor changes in style.

#### Amendments

The 1974 amendment substituted "board"

### 67-2130. Repealed.

#### Repeal

Section 68-2130 (Sec. 14, Ch. 97, L. 1969), relating to judicial review of deci-

sions by the former Montana real estate commission, was repealed by Sec. 363, Ch. 350, Laws of 1974.



**67-2135. Service of process.** (1) In addition to the methods of service of process provided for in the Montana Rules of Civil Procedure, service may be made upon any person for any cause arising under the provisions of this act by delivering a copy of the process to the office of the department, but it is not effective unless:

(a) The plaintiff (which may be the board in a proceeding instituted by it) immediately sends a copy of the process and of the pleading by registered mail to the defendant or respondent at his last known address; and

(b) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(2) If any person, including any nonresident of this state, engages in conduct prohibited by this act or any rule or order hereunder, and has not filed a consent to service of process and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct authorizes the department to receive service of process in any noncriminal proceeding against him or his successor which grows out of the conduct and which is brought under this act or any rule or order hereunder, with the same force and validity as if served on him personally. Notice shall be given as provided in subsection (1).

**History:** En. Sec. 19, Ch. 97, L. 1969; amd. Sec. 344, Ch. 350, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "agency" in the first sentence of subsection (1) and in subsection (2); substituted "board" for "agency" in subdivision (1)(a); and made minor changes in style.

## CHAPTER 22—DISPOSITION OF UNCLAIMED PROPERTY

### Section

- 67-2211. Report of abandoned property.
- 67-2212. Notice and publication of lists of abandoned property.
- 67-2213. Payment or delivery of abandoned property.
- 67-2214. Relief from liability by payment or delivery.
- 67-2215. Income accruing after payment or delivery.
- 67-2216. Periods of limitation not a bar.
- 67-2217. Sale of abandoned property.
- 67-2218. Deposit of moneys.
- 67-2219. Claim for abandoned property paid or delivered.
- 67-2220. Determination of claims.
- 67-2221. Judicial action upon determination.
- 67-2222. Election to take payment or delivery.
- 67-2223. Examination of records.
- 67-2224. Proceeding to compel delivery of abandoned property.
- 67-2225. Penalties.
- 67-2226. Rules and regulations.

### 67-2201. Definitions and use of terms.

**NOTE.**—Uniform State Law. In addition to the states listed in the parent volume, the following states have adopted

the "Uniform Disposition of Unclaimed Property Act": Minnesota, Nebraska, Rhode Island, Vermont and Wisconsin.

### 67-2206. Property of business associations, etc.

#### Shares and Dividends

Where corporation was voluntarily dissolved, unclaimed shares and their pro rata share of unpaid dividends would become abandoned property and subject to

escheat to state two years after final distribution of assets. Barnes-King Development Co. v. Corette, 156 M 202, 478 P 2d 868.

**67-2211. Report of abandoned property.** (a) Every person holding moneys or other property, tangible or intangible, presumed abandoned under this act shall report to the state department of revenue with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1). \* \* \* [Same as parent volume.]

(2) In case of unclaimed moneys of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

(3) and (4). \* \* \* [Same as parent volume.]

(5) Other information which the state department of revenue prescribes by rule as necessary for the administration of this act.

(c). \* \* \* [Same as parent volume.]

(d) The report shall be filed before November 1 every three (3) years as of June 30 next preceding, but the reports of life insurance corporations, banking and financial organizations and co-operatives, shall be filed before May 1 of each year as of December 31 next preceding. The state department of revenue may request that any other reports be filed each year. The state department of revenue may postpone the reporting date upon written request by any person required to file a report. The state department of revenue shall furnish forms for this report.

(e) to (g). \* \* \* [Same as parent volume.]

**History:** En. Sec. 11, Ch. 244, L. 1963; amd. Sec. 1, Ch. 21, L. 1967; amd. Sec. 2, Ch. 226, L. 1967; amd. Sec. 1, Ch. 216, L. 1971; amd. Sec. 24, Ch. 391, L. 1973.

and in subdivision (b)(2); and substituted "state board of equalization" for "state treasurer" in subsection (a), in subdivision (b)(5), and in three places in subsection (d).

#### **Amendments**

The 1971 amendment substituted "moneys" for "funds" in subsection (a)

The 1973 amendment substituted "department of revenue" for "board of equalization" throughout the section.

**67-2212. Notice and publication of lists of abandoned property.** (a) Within one hundred twenty (120) days from the filing of the report required by section 67-2211, the state department of revenue shall cause notice to be published at least once each week for two (2) successive weeks in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state.

(b) The published notice shall be entitled "Notice of Names of Persons Appearing to Be Owners of Abandoned Property," and shall contain:

(1). \* \* \* [Same as parent volume.]

(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the state department of revenue.

(3) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five (65) days from the date

of the second published notice, the abandoned property will be placed not later than eighty-five (85) days after such publication date in the custody of the state department of revenue to whom all further claims must thereafter be directed.

(c) The state department of revenue is not required to publish in such notice any item of less than twenty-five dollars (\$25) unless the department deems such publication to be in the public interest.

(d) Within one hundred twenty (120) days from the receipt of the report required by section 67-2211, the state department of revenue shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars (\$25) or more presumed abandoned under this act.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with the state department of revenue, property is being held to which the addressee appears entitled.

(2). \* \* \* [Same as parent volume.]

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice the property will be placed in the custody of the state department of revenue to whom all further claims must be directed.

(f). \* \* \* [Same as parent volume.]

**History:** En. Sec. 12, Ch. 244, L. 1963; amd. Sec. 3, Ch. 226, L. 1967; amd. Sec. 2, Ch. 216, L. 1971; amd. Sec. 25, Ch. 391, L. 1973.

#### Amendments

The 1971 amendment substituted references to the state board of equalization for references to the state treasurer in the

first sentence of subsection (a), at the end of subdivision (b)(2), near the end of subdivision (b)(3), in two places in subsection (c), in subsection (d), and in subdivisions (e)(1) and (e)(3).

The 1973 amendment substituted "department of revenue" for "board of equalization" throughout the section.

**67-2213. Payment or delivery of abandoned property.** Every person who has filed a report as provided by section 67-2211 shall within twenty (20) days after the time specified in section 67-2212 for claiming the property from the holder, or in the case of sums payable on travelers' checks or money orders presumed abandoned under section 67-2202 within twenty (20) days after the filing of the report, pay or deliver to the state department of revenue all abandoned property specified in this report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in section 67-2212, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the state department of revenue, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

**History:** En. Sec. 13, Ch. 244, L. 1963; amd. Sec. 4, Ch. 226, L. 1967; amd. Sec. 3, Ch. 216, L. 1971; amd. Sec. 26, Ch. 391, L. 1973.

#### Amendments

The 1971 amendment substituted "state

board of equalization" for "state treasurer" in two places.

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.



**67-2214. Relief from liability by payment or delivery.** Upon the payment or delivery of abandoned property to the state department of revenue, the state shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers abandoned property to the state department of revenue under this act is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Any holder who has paid moneys to the state department of revenue pursuant to this act may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the state department of revenue shall forthwith reimburse the holder for the payment. Any holder who has paid moneys to the state department of revenue pursuant to this act, and after exhausting his legal remedies, is compelled by authority of another jurisdiction to make a second payment to any other state, upon certified proof thereof and upon proof that the state department of revenue was notified in writing of the claim of such other state within thirty (30) days after such claim has been asserted, the state department of revenue shall refund to such holder the amount of such second payment not in excess of the amount paid to the state department of revenue under this act.

**History:** En. Sec. 14, Ch. 244, L. 1963; board of equalization" for "state treasurer" in eight places.  
amd. Sec. 4, Ch. 216, L. 1971; amd. Sec. 27, Ch. 391, L. 1973.

**Amendments**

The 1971 amendment substituted "state

The 1973 amendment substituted "department of revenue" for "board of equalization" throughout the section.

**67-2215. Income accruing after payment or delivery.** When property is paid or delivered to the state department of revenue under this act, the owner is not entitled to receive income or other increments accruing thereafter.

**History:** En. Sec. 15, Ch. 244, L. 1963; board of equalization" for "state treasurer."  
amd. Sec. 5, Ch. 216, L. 1971; amd. Sec. 28, Ch. 391, L. 1973.

**Amendments**

The 1971 amendment substituted "state

The 1973 amendment substituted "department of revenue" for "board of equalization."

**67-2216. Periods of limitation not a bar.** The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this act or to pay or deliver abandoned property to the state department of revenue.

**History:** En. Sec. 16, Ch. 244, L. 1963; board of equalization" for "state treasurer" at the end of the section.  
amd. Sec. 6, Ch. 216, L. 1971; amd. Sec. 29, Ch. 391, L. 1973.

**Amendments**

The 1971 amendment substituted "state

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the section.

**67-2217. Sale of abandoned property.** (a) All abandoned property other than money delivered to the state department of revenue under this

act shall within one (1) year after the delivery be sold by the department to the highest bidder at public sale in whatever city in the state affords in the department's judgment the most favorable market for the property involved. The state department of revenue may decline highest bid and reoffer the property for sale if the department considers the price bid insufficient. The department need not offer any property for sale if, in the department's opinion, the probable cost of sale exceeds the value of the property.

(b). \* \* \* [Same as parent volume.]

(c) The purchaser at any sale conducted by the state department of revenue pursuant to this act shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The state department of revenue shall execute all documents necessary to complete the transfer of title.

**History:** En. Sec. 17, Ch. 244, L. 1963; amd. Sec. 7, Ch. 216, L. 1971; amd. Sec. 30, Ch. 391, L. 1973.

#### Amendments

The 1971 amendment substituted references to the state board of equalization

for references to the state treasurer in seven places in subsection (a) and in two places in subsection (c).

The 1973 amendment substituted "department of revenue" for "board of equalization" and "department" for "board" throughout the section.

**67-2218. Deposit of moneys.** (a) All moneys received under this act, including the proceeds from the sale of abandoned property under section 67-2217, shall forthwith be deposited by the state department of revenue with the state treasurer for credit to the trust and legacy fund, public school account of the state, except that the state treasurer shall retain in the agency fund an amount not exceeding twenty-five thousand dollars (\$25,000) from which he shall make prompt payment of claims allowed by the department as hereinafter provided. Before making the deposit the state department of revenue shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

(b) Before making any deposit to the credit of the public school account, the state department of revenue may deduct: (1) any costs in connection with sale of abandoned property, (2) any costs of mailing and publication in connection with any abandoned property, and (3) reasonable service charges.

**History:** En. Sec. 18, Ch. 244, L. 1963; amd. Sec. 8, Ch. 216, L. 1971; amd. Sec. 31, Ch. 391, L. 1973.

#### Amendments

The 1971 amendment substituted "All moneys" for "All funds" at the beginning of subsection (a); substituted references to the state board of equalization for references to the state treasurer in three places in subsection (a) and in one place

in subsection (b); substituted "with the state treasurer for credit to the trust and legacy fund, public school account" in the first sentence of subsection (a) for "in the public school fund"; and substituted "public school account" for "public school fund" in subsection (b).

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" throughout the section.

**67-2219. Claim for abandoned property paid or delivered.** Any person claiming an interest in any property delivered to the state under this act may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the state department of revenue.

**History:** En. Sec. 19, Ch. 244, L. 1963; amd. Sec. 9, Ch. 216, L. 1971; amd. Sec. 32, Ch. 391, L. 1973.

#### Amendments

The 1971 amendment substituted "state

board of equalization" for "state treasurer" at the end of the section.

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the section.

**67-2220. Determination of claims.** (a) The state department of revenue shall consider any claim filed under this act and may hold a hearing and receive evidence concerning it. If a hearing is held the department shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by the department and the reasons for the department's decision. The decision shall be a public record.

(b) If the claim is allowed, the state department of revenue shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

**History:** En. Sec. 20, Ch. 244, L. 1963; amd. Sec. 10, Ch. 216, L. 1971; amd. Sec. 33, Ch. 391, L. 1973.

#### Amendments

The 1971 amendment substituted references to the state board of equalization

for references to the state treasurer in four places in subsection (a) and in one place in subsection (b).

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" throughout the section.

**67-2221. Judicial action upon determination.** Any person aggrieved by a decision of the state department of revenue or as to whose claim the department has failed to act within ninety (90) days after the filing of the claim, may commence an action in the district court of Lewis and Clark county to establish his claim. The proceeding shall be brought within ninety (90) days after the decision of the state department of revenue or within one hundred eighty (180) days from the filing of the claim if the department fails to act. The action shall be tried de novo without a jury.

**History:** En. Sec. 21, Ch. 244, L. 1963; amd. Sec. 11, Ch. 216, L. 1971; amd. Sec. 34, Ch. 391, L. 1973.

#### Amendments

The 1971 amendment substituted references to the state board of equalization

for references to the state treasurer in four places.

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" throughout the section.

**67-2222. Election to take payment or delivery.** The state department of revenue, after receiving reports of property deemed abandoned pursuant to this act, may decline to receive any property reported which the department deems to have a value less than the cost of giving notice and holding sale, or the department may, if the department deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates.

**History:** En. Sec. 22, Ch. 244, L. 1963; amd. Sec. 12, Ch. 216, L. 1971; amd. Sec. 35, Ch. 391, L. 1973.

#### Amendments

The 1971 amendment substituted references to the state board of equalization



for references to the state treasurer in four places.

The 1973 amendment substituted "de-

partment of revenue" and "department" for "board of equalization" and "board" throughout the section.

**67-2223. Examination of records.** The state department of revenue, or their designated agent, may at reasonable times and upon reasonable notice examine the records of any person if the department has reason to believe that such person has failed to report property that should have been reported pursuant to this act.

**History:** En. Sec. 23, Ch. 244, L. 1963; amd. Sec. 13, Ch. 216, L. 1971; amd. Sec. 36, Ch. 391, L. 1973.

#### Amendments

The 1971 amendment substituted "The state board of equalization, or their de-

signed agent" for "The state treasurer" at the beginning of the section; and substituted "the board" for "he" before "has reason to believe."

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board."

**67-2224. Proceeding to compel delivery of abandoned property.** If any person refuses to deliver property to the state department of revenue as required under this act, the department shall bring an action in a court of appropriate jurisdiction to enforce such delivery.

**History:** En. Sec. 24, Ch. 244, L. 1963; amd. Sec. 14, Ch. 216, L. 1971; amd. Sec. 37, Ch. 391, L. 1973.

#### Amendments

The 1971 amendment substituted refer-

ences to the state board of equalization for references to the state treasurer in two places.

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board."

**67-2225. Penalties.** (a). \* \* \* [Same as parent volume.]

(b) Any person who willfully refuses to pay or deliver abandoned property to the state department of revenue as required under this act shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or imprisonment for not more than six (6) months, or both, in the discretion of the court.

**History:** En. Sec. 25, Ch. 244, L. 1963; amd. Sec. 15, Ch. 216, L. 1971; amd. Sec. 38, Ch. 391, L. 1973.

#### Amendments

The 1971 amendment substituted "state

board of equalization" for "state treasurer" in subsection (b).

The 1973 amendment substituted "department of revenue" for "board of equalization" in subsection (b).

**67-2226. Rules and regulations.** The state department of revenue is hereby authorized to make necessary rules and regulations to carry out the provisions of this act and shall be represented in the enforcement of the provisions of this act by the special assistant attorney general in charge of escheated estates.

**History:** En. Sec. 26, Ch. 244, L. 1963; amd. Sec. 16, Ch. 216, L. 1971; amd. Sec. 39, Ch. 391, L. 1973.

#### Amendments

The 1971 amendment substituted "The

state board of equalization" for "The state treasurer" at the beginning of the section.

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

## CHAPTER 23—UNIT OWNERSHIP ACT

Section	Definition of terms.
67-2302.	Application of act—execution, acknowledgment, recording of declaration.
67-2303.1.	Disposition of funds from purchase of lease of unit prior to completion of construction.
67-2303.2.	Notice of intention to sell by developer—fees.
67-2303.3.	Examination of project by department after notice of intent to sell.
67-2303.4.	Refund of purchaser's funds for changes in building plans—final reports.
67-2303.5.	Final report prior to completion of project—supplemental report.
67-2303.6.	No binding contract until purchaser has received final report.
67-2304.	Status of the unit.
67-2305.	Ownership of unit.
67-2314.	Contents of declaration.
67-2317.	Approval of declaration before recording.
67-2318.	Recording of declaration.
67-2319.	Floor plans recorded with declaration.
67-2322.	Contents of deed or leases of unit.
67-2323.	Blanket mortgages and other blanket liens affecting unit at time of first conveyance or lease.
67-2340.	Separate taxation.
67-2342.	Appraisal and assessment of units.
67-2343.	Investigation by department—injunction.
67-2344.	Misdemeanor.

**67-2302. Definition of terms.** As used in sections 67-2302 to 67-2342, unless the context requires otherwise:

(1) to (4). \* \* \* [Same as parent volume.]

(5) "Condominium" means the ownership of single units with common elements located on property submitted to the provisions of sections 67-2301 to 67-2342.

(6) "Declaration" means the instrument by which the property is submitted to the provisions of sections 67-2302 to 67-2342.

(7) "Department" means the department of business regulation.

(8) "General common elements," unless otherwise provided in a declaration or by consent of all the unit owners, means:

(a) and (b). \* \* \* [Same as (6)(a) and (6)(b) in parent volume.]

(c) The basements, yards, gardens, parking areas and outside storage spaces, private pathways, sidewalks and private roads;

(d) to (g). \* \* \* [Same as (6)(d) to (6)(g) in parent volume.]

(9) "Limited common elements" means those common elements designated in the declaration or by agreement of all the unit owners, as reserved for the use of a certain unit or number of units, to the exclusion of the other units.

(10) "Majority" or "Majority of the unit owners," unless otherwise provided in the declaration, means the owners of more than fifty per cent (50%) in the aggregate of the undivided ownership interests in the general common elements as the percentage of interest in such element appertaining to each unit is expressed in the declaration. Whenever a percentage of the unit owners is specified, percentage means such percentage in the aggregate of such undivided ownership.

(11) "Manager" means the manager, board of managers or other person in charge of the administration of or managing, the property.

(12) "Project" means a real estate condominium project; a plan whereby a condominium of two (2) or more units, located on property submitted to the provisions of 67-2302—67-2342, are offered or proposed to be offered for sale.

(13) "Property" means the land, all buildings, improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, which are submitted to the provisions of sections 67-2302 to 67-2342.

(14) "Recording officer" means the county officer charged with the duty of filing and recording deeds and mortgages or any other instruments or documents affecting the title to real property.

(15) "Unit" means a part of the property including one or more rooms occupying one or more floors or a part or parts thereof, intended for any type of independent use, and with a direct exit to a public street or highway or to a common area or area leading to a public street or highway.

(16) "Unit designation" means the number, letter or combination thereof designating a unit in the declaration.

(17) "Unit owner" means the person owning a unit in fee simple absolute individually or as co-owner in any real estate tenancy relationship recognized under the laws of this state. However, for all purposes, including the exercise of voting rights, provided by lease filed with the presiding officer of the association of unit owners, a lessee of a unit shall be considered a unit owner.

**History:** En. Sec. 2, Ch. 120, L. 1965; amd. Sec. 1, Ch. 150, L. 1973.

#### Amendments

The 1973 amendment inserted subsection (5); renumbered former subsection (5) as (6); inserted subsection (7); renumbered former subsection (6) as (8); added "private pathways, sidewalks and

private roads" to paragraph (c) of present subsection (8); renumbered former subsections (7), (8) and (9) as (9), (10) and (11); inserted subsection (12); renumbered former subsections (10), (11), (12), (13) and (14) as (13), (14), (15), (16) and (17); and added the second sentence to present subsection (17).

**67-2303. Application of act—execution, acknowledgment, recording of declaration.** In order to submit any property to the provisions of sections 67-2302 to 67-2342, the sole owner or sole lessee or all of the owners or all of the lessees thereof shall execute, acknowledge, and record a declaration in the office of the recording officer of the county in which the property is located. The declaration shall be executed in accordance with section 67-2314.

**History:** En. Sec. 3, Ch. 120, L. 1965; amd. Sec. 2, Ch. 150, L. 1973.

#### Amendments

The 1973 amendment inserted "sole" before "owner"; inserted "or sole lessee

or all of the owners or all of the lessees" and "execute, acknowledge, and" in the first sentence; deleted "and acknowledged by the owner of the property" from the end of the second sentence; and made a minor change in style.

**67-2303.1. Disposition of funds from purchase of lease of unit prior to completion of construction.** (1) If units are conveyed or leased prior to the completion of construction of the building, within which such unit is located, and all of the general common elements of the project (except those general common elements forming a part of a separate building in-



closing other units) as set forth in declaration filed pursuant to section 67-2314, all moneys from the sale of the units including any payments made on loan commitments from lending institutions, shall be deposited in escrow by the developer in a fund with a bank, savings and loan association, or company authorized to do business in the state under an escrow arrangement.

(2) No disbursements may be made from such fund until the completion of the building and general common elements or until compliance with the provisions of sections 67-2303.2 through 67-2303.6, whichever comes first.

(3) If no disbursements are made until after the building and general common elements have been completed, the developer need not comply with sections 67-2303.2 through 67-2303.6.

(4) If sections 67-2303.2 through 67-2303.6 have been complied with, disbursements from such fund may be made, from time to time, to pay for construction costs of the building in proportion to the valuation of the work completed by the contractor as certified by a registered architect or registered professional engineer, and for architectural, engineering, finance, and legal fees and for other incidental expenses of the condominium project as approved by the mortgagee. The balance of the moneys remaining in the fund shall be disbursed only upon completion of the building, free and clear of all mechanic's and materialman's liens. The department may impose other restrictions relative to the retention and disbursement of the fund.

**History:** En. 67-2303.1 by Sec. 3, Ch. 150, L. 1973.

#### **Title of Act**

An act to amend the Unit Ownership Act to provide that lessees of a condominium unit may be treated as owners

and to provide for sale of units before construction to be under the control of the department of business regulation; amending sections 67-2302 through 67-2305, 67-2314, 67-2319, 67-2322 and 67-2323, R. C. M. 1947.

**67-2303.2. Notice of intention to sell by developer—fees.** (1) The developer of a project shall notify the department in writing prior to the time the project or units thereof are to be offered for sale.

(2) The notice of intention to sell shall fully disclose all material facts on a form prescribed by the department.

(3) The fee for filing the notice of intention is fifty dollars (\$50). For the inspection of the project and examination of the accounts and records of the developer, the department may require the developer to pay the costs thereof, not to exceed the sum of one hundred dollars (\$100) for each day actually required to perform such duties, but in no event shall the total charges exceed the sum of five hundred dollars (\$500).

**History:** En. 67-2303.2 by Sec. 4, Ch. 150, L. 1973.

**67-2303.3. Examination of project by department after notice of intent to sell.** (1) After receipt of the notice of intention to sell, the department shall inspect the project and examine the accounts and records of the developer.

(2) The department shall make a report of its inspection which shall contain all material facts reasonably available and which shall be on file and available for public inspection in the office of the director.

(3) The department may issue a preliminary report if the notice of intention is incomplete in some respect but the department is satisfied that the report will adequately disclose all material facts which a prospective purchaser should consider and that adequate protection for purchaser's funds has been provided.

(4) A developer may not use a preliminary report to contract for the sale of a unit unless he files the notice of intention to sell, a specimen copy of the proposed contract of sale, and an executed copy of an escrow agreement with a depository in accordance with section 67-2303.1.

**History:** En. 67-2303.3 by Sec. 5, Ch. 150, L. 1973.

**67-2303.4. Refund of purchaser's funds for changes in building plans—final reports.** (1) Purchasers funds obtained prior to issuance of final reports shall be refunded if there is any change in the condominium building plans subsequent to execution of the contract requiring approval of a city or county officer having jurisdiction over issuance of permits for construction of buildings, unless purchaser's written acceptance of the specific change is obtained.

(2) Rights under contracts of sale of condominium units under a preliminary report are not enforceable against purchasers until purchasers have had a full opportunity to read the department's final report on the project, and to obtain a refund of any moneys paid as well as a release from all obligations if the final report differs in any material respect from the preliminary report.

(3) If the final report is not issued within one (1) year from the date of issuance of the preliminary report, purchasers are entitled to refund of all moneys paid by the purchasers thereunder without further obligation.

**History:** En. 67-2303.4 by Sec. 6, Ch. 150, L. 1973.

**67-2303.5. Final report prior to completion of project—supplemental report.** (1) The department may not issue a final report prior to completion of construction of a project unless:

(a) There is filed with the department:

(i) a verified statement showing all costs involved in completing the project, including land, ground lease payments and equipment lease payments, real property taxes, construction costs, architect, engineering, and attorneys fees, financing costs, provisions for contingency, and other costs which must be paid on or before the completion of construction of the building;

(ii) a verified estimate of the time of completion of construction of the total project;

(iii) satisfactory evidence of sufficient funds to cover the total project cost from purchasers funds, equity funds, interim or permanent loan commitments, or other sources;

- (iv) a copy of the executed construction contract;
- (v) satisfactory evidence of a performance bond of not less than one hundred per cent (100%) of the cost of construction with a reliable surety company;
- (vi) if purchasers funds are to be used for construction, an executed copy of the escrow agreement for the escrow fund required under section 67-2303.1 for financing construction, which shall expressly provide for:
  - (A) no disbursements by the escrow agent for payment of construction costs unless bills are submitted with the request for such disbursements which have been approved or certified for payment by the mortgagee or a financially disinterested person; and
  - (B) no disbursements from the balance of the escrow fund after payment of construction costs pursuant to the preceding paragraph until the escrow agent receives satisfactory evidence that all mechanics' and material-men's liens have been cleared, unless sufficient funds are set aside for any bona fide dispute.

(b) The declaration provided for in section 67-2314 has been filed.

(2) If after a final report has been issued, any circumstance occurs which would render the final report misleading as to purchasers, or if the developer proposes to materially change the project, the developer shall stop all sales and immediately submit sufficient information to the department to enable it to issue a supplementary report describing the changes. Sales shall not resume until the supplementary report has been issued.

**History:** En. 67-2303.5 by Sec. 7, Ch. 150, L. 1973.

**67-2303.6. No binding contract until purchaser has received final report.** (1) The developer, or any other person offering any unit in a condominium project prior to completion of its construction, shall not enter into a binding contract or agreement for the sale or resale thereof until:

- (a) a true copy of the department's final report thereon with all supplementary reports has been given to the prospective purchaser;
- (b) the prospective purchaser has been given an opportunity to read the reports; and
- (c) the prospective purchaser executes a receipt for the reports.

(2) Receipts taken for any report shall be kept on file in possession of the developer subject to inspection at a reasonable time by the department for a period of three (3) years from the date the receipt was taken.

**History:** En. 67-2303.6 by Sec. 8, Ch. 150, L. 1973.

**67-2304. Status of the unit.** While the property is submitted to sections 67-2302 to 67-2342, a unit in the building may be individually conveyed, leased or encumbered and may be the subject of ownership, possession or sale and of all types of juridic acts inter vivos or mortis causa, as if it were sole and entirely independent of the other units in the building of which they form a part, and the corresponding individual titles and interests shall be recordable.



**History:** En. Sec. 4, Ch. 120, L. 1965;  
amd. Sec. 9, Ch. 150, L. 1973.

**Amendments**

The 1973 amendment inserted "leased" near the beginning of the section and made a minor change in style.

**67-2305. Ownership of unit.** Each unit owner shall be entitled to the exclusive ownership and possession of his unit. A unit may be jointly or commonly owned by more than one (1) person.

**History:** En. Sec. 5, Ch. 120, L. 1965;  
amd. Sec. 10, Ch. 150, L. 1973.

**Amendments**

The 1973 amendment added the second sentence.

**67-2314. Contents of declaration.** A declaration shall contain:

(1) A description of the land, whether leased or in fee simple, on which the building is or is to be located.

(2) to (8). \* \* \* [Same as parent volume.]

**History:** En. Sec. 14, Ch. 120, L. 1965;  
amd. Sec. 11, Ch. 150, L. 1973.

leased or in fee simple, on which the building is or is to be located" to subsection (1).

**Amendments**

The 1973 amendment added "whether

**67-2317. Approval of declaration before recording.** Before a declaration may be recorded, it must be approved by the agent of the department of revenue in the county in which the property is located. No declaration shall be approved unless:

(1) and (2). \* \* \* [Same as parent volume.]

**History:** En. Sec. 17, Ch. 120, L. 1965;  
amd. Sec. 40, Ch. 391, L. 1973.

of the department of revenue in" for "county assessor of" in order to implement article VIII, section 3 of the 1972 constitution.

**Amendments**

The 1973 amendment substituted "agent

**67-2318. Recording of declaration.** When a declaration is made and approved as required, it shall, upon the payment of the fees provided by law, be recorded by the recording officer. The fact of recording and the date thereof shall be entered thereon. At the time of recording a declaration, the person offering it for record shall also file an exact copy, certified by the recording officer to be a true copy thereof, with the department of revenue or its agent in the county in which the property is located.

**History:** En. Sec. 17, Ch. 120, L. 1965;  
amd. Sec. 41, Ch. 391, L. 1973.

partment of revenue or its agent in the county in which the property is located" at the end of the section for "county assessor" in order to implement article VIII, section 3 of the 1972 constitution.

**Amendments**

The 1973 amendment substituted "de-

**67-2319. Floor plans recorded with declaration.** Floor plans of the building described in a declaration shall be recorded simultaneously with the declaration. The floor plans shall show the layout of each unit including the unit designation, location and dimensions of each unit and the common areas to which each has access. There shall be attached to the floor plans a statement of the registered architect or registered professional engineer who prepared the floor plans, certifying that the plans are an accurate copy of the plans filed with and approved by the city and county officers having

jurisdiction to issue building permits. If the plans do not include a verified statement by the architect or engineer that the plans fully and accurately depict the layout, location, unit designation and dimensions of each unit as built, there shall be recorded within thirty (30) days from the date of completion of the building, or from the date of the first occupancy of the building, whichever first occurs, an amendment to the declaration to which shall be attached a verified statement of a registered architect or registered professional engineer certifying that the floor plans previously filed, or being filed simultaneously with the amendment, fully and accurately depict the layout of the units and floors of the building and the date construction of the building was completed.

**History:** En. Sec. 19, Ch. 120, L. 1965;  
amd. Sec. 12, Ch. 150, L. 1973.

#### Amendments

The 1973 amendment substituted "are an accurate copy of the plan filed with and approved by the city and county offi-

cers having jurisdiction to issue building permits" for "fully and accurately depict the layout of the units and floors of the building and the date construction of the building was completed" at the end of the first sentence; and added the second sentence.

**67-2322. Contents of deed or leases of unit.** The deed or lease of a unit shall contain:

(1) to (4). \* \* \* [Same as parent volume.]

(5) Any further details the grantor and grantee or lessor and lessee may consider desirable.

**History:** En. Sec. 22, Ch. 120, L. 1965;  
amd. Sec. 13, Ch. 150, L. 1973.

#### Amendments

The 1973 amendment inserted "or lease" in the preliminary clause; and inserted "or lessor and lessee" in subsection (5).

**67-2323. Blanket mortgages and other blanket liens affecting unit at time of first conveyance or lease.** At the time of the first conveyance or lease of each unit following the recording of the declaration, every mortgage and other lien affecting such unit including the undivided interest of the unit in the common elements, shall be paid and satisfied of record, or the unit being conveyed or leased and its interest in the common elements shall be released therefrom by partial release duly recorded.

**History:** En. Sec. 23, Ch. 120, L. 1965;  
amd. Sec. 14, Ch. 150, L. 1973.

#### Amendments

The 1973 amendment inserted "or lease" following "conveyance" and inserted "or leased" following "conveyed."

**67-2340. Separate taxation.** (1) \* \* \* [Same as parent volume.]

(2) In determining the true cash value of a unit with its undivided interest in the common elements, the department of revenue or its agent may use the percentage of undivided interest in the common elements appertaining to a unit as expressed in the declaration.

**History:** En. Sec. 40, Ch. 120, L. 1965;  
amd. Sec. 42, Ch. 391, L. 1973.

#### Amendments

The 1973 amendment substituted "de-

partment of revenue or its agent" for "county assessor" in subsection (2), in order to implement article VIII, sections 3 and 7 of the 1972 constitution.

**67-2342. Appraisal and assessment of units.** The state department of revenue shall have the authority to make rules and regulations prescribing

methods best calculated to secure uniformity according to law in the appraisal and assessment of units constituting part of a property submitted to the provisions of sections 67-2302 to 67-2342.

**History:** En. Sec. 42, Ch. 120, L. 1965;      **Amendments**  
amd. Sec. 43, Ch. 391, L. 1973.

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section.

**67-2343. Investigation by department—injunction.** If the department has satisfactory evidence to indicate that any person has violated any provision of sections 67-2301 to 67-2342, it may conduct an investigation and bring an action for injunction.

**History:** En. Sec. 15, Ch. 150, L. 1973.

**67-2344. Misdemeanor.** Any person who violates any provision of sections 67-2301 to 67-2342 or any rule of the department under such sections is guilty of a misdemeanor and shall be punished by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment for not more than one (1) year, or both.

**History:** En. Sec. 16, Ch. 150, L. 1973.





## TITLE 68—PUBLIC EMPLOYEES' RETIREMENT ACT

### Chapter

1. Purpose of act—definitions, Repealed—Section 63, Chapter 323, Laws of 1973.
2. Retirement system created—who are members, Repealed—Section 63, Chapter 323, Laws of 1973.
3. Contracts between municipal corporations, counties and public agencies, Repealed—Section 63, Chapter 323, Laws of 1973.
4. Cost of service, how borne—change of status—membership—retirement fund, Repealed—Section 63, Chapter 323, Laws of 1973.
5. Board of administration—powers and duties, Repealed—Section 63, Chapter 323, Laws of 1973.
6. Prior service—allowance for—cost to cities, counties and public agencies, Repealed—Section 63, Chapter 323, Laws of 1973.
7. Management of retirement fund, Repealed—Section 63, Chapter 323, Laws of 1973.
8. Retirement—compulsory—voluntary, Repealed—Section 63, Chapter 323, Laws of 1973.
9. Service and disability retirement allowances, Repealed—Section 63, Chapter 323, Laws of 1973.
10. Reinstatement—reduction of allowance—optional modification of allowances, Repealed—Section 63, Chapter 323, Laws of 1973.
11. Death benefits, Repealed—Section 63, Chapter 323, Laws of 1973.
12. Benefits to whom paid, Repealed—Section 63, Chapter 323, Laws of 1973.
13. Miscellaneous provisions, Repealed—Section 63, Chapter 323, Laws of 1973.
14. Game wardens' retirement system, 68-1401, 68-1407, 68-1408, 68-1414.
15. Public employees' retirement system—definitions and general provisions, 68-1501 to 68-1504.
16. Membership—service credits, 68-1601 to 68-1608.
17. Contracts with political subdivisions—elections, 68-1701 to 68-1704.
18. Board of administration, 68-1801 to 68-1804.
19. Management of fund—employer and employee contributions, 68-1901 to 68-1907.
20. Service retirement eligibility and allowances, 68-2001 to 68-2005.
21. Disability retirement eligibility and allowance, 68-2101 to 68-2104.
22. Reduction or cancellation of allowance, 68-2201 to 68-2204.
23. Death benefits, 68-2301 to 68-2305.
24. Beneficiaries, 68-2401, 68-2402.
25. Administration of contributions and allowances, 68-2501 to 68-2514.
26. Sheriffs' retirement system, 68-2601 to 68-2629.
27. Deferred compensation plan, 68-2701 to 68-2709.

### CHAPTER 1—PURPOSE OF ACT—DEFINITIONS

(Repealed—Section 63, Chapter 323, Laws of 1973)

#### 68-101, 68-102. Repealed.

##### Repeal

Sections 68-101, 68-102 (Secs. 1, 2, Ch. 212, L. 1945; Sec. 1, Ch. 297, L. 1947; Sec. 1, Ch. 186, L. 1951; Sec. 1, Ch. 92, L. 1955; Sec. 1, Ch. 246, L. 1959; Sec. 1, Ch. 271,

L. 1969), relating to the Public Employees Retirement Act, were repealed by Sec. 63, Ch. 323, Laws of 1973. For new law, see secs. 68-1501 and 68-1503.

### CHAPTER 2—RETIREMENT SYSTEM CREATED—WHO ARE MEMBERS

(Repealed—Section 63, Chapter 323, Laws of 1973)

#### 68-201 to 68-203. Repealed.

##### Repeal

Sections 68-201 to 68-203 (Secs. 3 to 5, Ch. 212, L. 1945; Sec. 2, Ch. 297, L. 1947; Sec. 2, Ch. 186, L. 1951; Secs. 2, 3, Ch. 92, L. 1955; Sec. 2, Ch. 246, L. 1959; Sec. 1,

Ch. 150, L. 1967), relating to membership in the public employees' retirement system, were repealed by Sec. 63, Ch. 323, Laws of 1973. For new law, see secs. 68-1601 to 68-1608.

CHAPTER 3—CONTRACTS BETWEEN MUNICIPAL CORPORATIONS,  
COUNTIES AND PUBLIC AGENCIES

(Repealed—Section 63, Chapter 323, Laws of 1973)

**68-301 to 68-303. Repealed.****Repeal**

Sections 68-301 to 68-303 (Secs. 6 to 8, Ch. 212, L. 1945; Sec. 1, Ch. 119, L. 1965), relating to contracts of the board of ad-

ministration with political subdivisions and other public agencies, were repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-1701 to 68-1704.

CHAPTER 4—COST OF SERVICE, HOW BORNE—CHANGE OF STATUS—  
MEMBERSHIP—RETIREMENT FUND

(Repealed—Section 63, Chapter 323, Laws of 1973)

**68-401 to 68-405. Repealed.****Repeal**

Sections 68-401 to 68-405 (Secs. 9 to 13, Ch. 212, L. 1945; Secs. 3, 4, Ch. 297, L. 1947; Sec. 3, Ch. 186, L. 1951; Sec. 197, Ch. 147, L. 1963), relating to cost of

service and changes in status of members of the public employees' retirement system, were repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-1603, 68-1904 and 68-2512.

## CHAPTER 5—BOARD OF ADMINISTRATION—POWERS AND DUTIES

(Repealed—Section 63, Chapter 323, Laws of 1973)

**68-501. Repealed.****Repeal**

Section 68-501 (Sec. 14, Ch. 212, L. 1945; Sec. 5, Ch. 297, L. 1947; Sec. 4, Ch. 186, L. 1951; Sec. 1, Ch. 224, L. 1951; Sec. 1, Ch. 225, L. 1953; Sec. 4, Ch. 92, L.

1955; Sec. 1, Ch. 233, L. 1965; Sec. 2, Ch. 271, L. 1969), relating to the board of administration, was repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-1801 to 68-1804.

CHAPTER 6—PRIOR SERVICE—ALLOWANCE FOR—COST TO CITIES,  
COUNTIES AND PUBLIC AGENCIES

(Repealed—Section 63, Chapter 323, Laws of 1973)

**68-601 to 68-603. Repealed.****Repeal**

Sections 68-601 to 68-603 (Secs. 15 to 17, Ch. 212, L. 1945), relating to allowance of

credit for prior service, were repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-1601 to 68-1608.

## CHAPTER 7—MANAGEMENT OF RETIREMENT FUND

(Repealed—Section 63, Chapter 323, Laws of 1973)

**68-701 to 68-710. Repealed.****Repeal**

Sections 68-701 to 68-710 (Sec. 18, Ch. 212, L. 1945; Sec. 6, Ch. 297, L. 1947; Sec. 2, Ch. 176, L. 1953; Sec. 5, Ch. 92, L. 1955; Sec. 3, Ch. 246, L. 1959; Sec. 1,

Ch. 222, L. 1967; Sec. 1, Ch. 227, L. 1967; Sec. 1, Ch. 98, L. 1969), relating to management of the retirement fund, were repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-1901 to 68-1907.



## CHAPTER 8—RETIREMENT—COMPULSORY—VOLUNTARY

(Repealed—Section 63, Chapter 323, Laws of 1973)

**68-801, 68-802. Repealed.****Repeal**

Sections 68-801, 68-802 (Sec. 19, Ch. 212, L. 1945; Sec. 7, Ch. 297, L. 1947; Sec. 5, Ch. 186, L. 1951; Sec. 1, Ch. 35, L. 1955; Sec. 4, Ch. 246, L. 1959; Sec. 2, Ch. 227, L. 1967; Sec. 1, Ch. 244, L. 1969; Sec. 3,

Ch. 271, L. 1969; Sec. 1, Ch. 116, L. 1971), relating to retirement by a public employee, were repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-1901 to 68-1907 and 68-2001 to 68-2005.

## CHAPTER 9—SERVICE AND DISABILITY RETIREMENT ALLOWANCES

(Repealed—Section 63, Chapter 323, Laws of 1973)

**68-901, 68-902. Repealed.****Repeal**

Sections 68-901, 68-902 (Sec. 20, Ch. 212, L. 1945; Sec. 6, Ch. 186, L. 1951; Sec. 5, Ch. 246, L. 1959; Sec. 1, Ch. 207, L. 1963; Sec. 3, Ch. 227, L. 1967; Sec. 4, Ch. 271,

L. 1969; Secs. 2, 3, Ch. 116, L. 1971), relating to service and disability retirement allowances, were repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-2002 to 68-2005, 68-2103 and 68-2104.

CHAPTER 10—REINSTATEMENT—REDUCTION OF ALLOWANCE—  
OPTIONAL MODIFICATION OF ALLOWANCES

(Repealed—Section 63, Chapter 323, Laws of 1973)

**68-1001 to 68-1005. Repealed.****Repeal**

Sections 68-1001 to 68-1005 (Secs. 21 to 25, Ch. 212, L. 1945; Secs. 6 to 8, Ch. 92, L. 1955; Secs. 4, 5, Ch. 227, L. 1967), relating to modification and reduction of

allowances and reinstatement to former employees, were repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-2201 to 68-2204.

## CHAPTER 11—DEATH BENEFITS

(Repealed—Section 63, Chapter 323, Laws of 1973)

**68-1101. Repealed.****Repeal**

Section 68-1101 (Sec. 26, Ch. 212, L. 1945; Sec. 7, Ch. 186, L. 1951; Sec. 2, Ch. 225, L. 1953; Sec. 9, Ch. 92, L. 1955; Sec. 2, Ch. 207, L. 1963; Sec. 1, Ch. 110, L.

1965; Sec. 6, Ch. 227, L. 1967), relating to death benefits, was repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-2301 to 68-2305.

## CHAPTER 12—BENEFITS TO WHOM PAID

(Repealed—Section 63, Chapter 323, Laws of 1973)

**68-1201. Repealed.****Repeal**

Section 68-1201 (Sec. 27, Ch. 212, L. 1945), relating to the beneficiary of death

benefits, was repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-2401 and 68-2402.

## CHAPTER 13—MISCELLANEOUS PROVISIONS

(Repealed—Section 63, Chapter 323, Laws of 1973)

**68-1301 to 68-1320. Repealed.****Repeal**

Sections 68-1301 to 68-1320 (Secs. 28 to 33, 35 to 41, Ch. 212, L. 1945; Secs. 1, 2, Ch. 40, L. 1947; Secs. 8, 9, Ch. 297, L. 1947; Secs. 1 to 4, Ch. 132, L. 1953; Secs. 10 to 12, Ch. 92, L. 1955; Sec. 1, Ch. 181,

L. 1961; Sec. 1, Ch. 214, L. 1967; Sec. 5, Ch. 271, L. 1969; Sec. 4, Ch. 116, L. 1971), miscellaneous provisions relating to the Public Employees' Retirement Act, were repealed by Sec. 63, Ch. 323, Laws 1973.

## CHAPTER 14—GAME WARDENS' RETIREMENT SYSTEM

## Section

68-1401. Definition of terms.

68-1404. [Transferred.]

68-1407. Membership.

68-1408. State game wardens' retirement account.

68-1414. Disability retirement allowance.

**68-1401. Definition of terms.** Unless the context requires otherwise, in this act:

(1) "Accumulated deductions" means the total of the amount deducted from the salary of a contributor and paid into the account, and standing to his credit in the account together with the regular interest thereon.

(2) "Beneficiary" means a person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board.

(3) "Retired state game warden" means any person in receipt of a retirement allowance under this act.

(4) "Board" means the Montana state game wardens' retirement board.

(5) "Contributor" means any person who has accumulated deductions in the account, standing to his credit.

(6) "Final salary" means the average annual compensation received by a contributor before any deductions have been made, and exclusive of maintenance, allowances, and expenses, for any three (3) years of continuous service upon which contributions have been made, or, in the event a member has not served three (3) years, the total retirement compensation earned, divided by the number of years served.

(7) "Actuarial equivalent" means the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on the person's attained age and sex at the time the option becomes available.

(8) "Account" means the Montana state game wardens' retirement account in the agency fund.

(9) "Involuntary retirement" means a retirement not for cause and before retirement age.

(10) "Member's annuity" means payments for life derived from contributions made by the contributor.

(11) "Optional retirement age" means the age at which a contributor may retire after twenty (20) years service or more; provided that the contributor has reached the age of fifty-five (55) years.

(12) "Retirement age" means the age at which a member retires after twenty-five (25) years of creditable service as a state game warden of the department of fish and game. All members must retire at age sixty (60).

(13) "Retirement allowance" means the state annuity plus the member's annuity.

(14) "State annuity" means payments for life derived from contributions made by the state of Montana fish and game moneys in the earmarked revenue fund.

**History:** En. Sec. 1, Ch. 130, L. 1963; amd. Sec. 16, Ch. 326, L. 1974.

partment of fish and game" in subdivision (12) for "Montana fish and game department"; and made minor changes in punctuation and style.

**Amendments**

The 1974 amendment substituted "de-

### 68-1403. Repealed.

**Repeal** The retirement system, was repealed by Sec.

Section 68-1403 (Sec. 3, Ch. 130, L. 1963), relating to the state game wardens'

103, Ch. 326, Laws of 1974.

### 68-1404. [Transferred.]

**Compiler's Notes**

Section 17, Ch. 326, Laws of 1974 renumbered this section as sec. 82A-210.1.

### 68-1405. Payments into the Montana game wardens' retirement system.

**Compiler's Notes**

Section 100, Ch. 326, Laws 1974, substituted "board of investments" throughout

this section for "state board of land commissioners."

**68-1407. Membership.** Every state game warden, including all warden supervisory personnel, whose salary or compensation for services is paid wholly out of the Montana fish and game moneys in the earmarked revenue fund and who is assigned to law enforcement in the department of fish and game, shall become a member of the retirement system when first becoming a state game warden. If a person becomes a state game warden after July 1, 1963, who was at any time before July 1, 1963, a state game warden, he shall receive credit for any such service prior to July 1, 1963, upon complying with the provisions of this act. All state game wardens shall be members of the retirement system so long as actively employed in that capacity.

**History:** En. Sec. 7, Ch. 130, L. 1963; amd. Sec. 18, Ch. 326, L. 1974.

**Amendments**

The 1974 amendment deleted "established by this act, on July 1, 1963, and

thereafter" after "retirement system" in the first sentence; deleted a former second sentence reading "Contributions by members under this act shall commence with the first payroll after July 1, 1963"; and made minor changes in phraseology.

**68-1408. State game wardens' retirement account.** There is a state game wardens' retirement account in the agency fund and all moneys received under the provisions of this act shall be credited to that account. A state game warden shall be allowed service credit hereunder for any service prior to July 1, 1963, including other Montana state, county, or city service.



**History:** En. Sec. 8, Ch. 130, L. 1963; amd. Sec. 19, Ch. 326, L. 1974.

#### Amendments

The 1974 amendment deleted from the beginning of the second sentence a clause reading "In addition thereto, all moneys any state game warden, employed as such on July 1, 1963, has heretofore paid into the public employees' retirement system, whether as a state game warden or otherwise, is hereby appropriated therefrom and credited to the account hereby created";

inserted "prior to July 1, 1963" after "any service" in the second sentence; deleted former third and fourth sentences reading "The state treasurer shall, upon the passage of this act, ascertain the amount heretofore paid by the state game wardens or as deputy game wardens as aforesaid and transfer the amount so paid to the account hereby created. The state examiner shall audit this transfer of funds"; and made minor changes in punctuation and phraseology.

**68-1414. Disability retirement allowance.** If the total disability of a contributor is permanent in character, regardless of length of service of the contributor, a disability retirement allowance shall be granted the contributor in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement. If the total disability is a direct result of any service to the department of fish and game in line of duty, and the contributor has had over ten (10) years of service, the state game warden who is totally and permanently disabled shall be retired on total retirement allowance of one-half ( $\frac{1}{2}$ ) of his average final salary.

**History:** En. Sec. 14, Ch. 130, L. 1963; amd. Sec. 20, Ch. 326, L. 1974.

#### Amendments

The 1974 amendment made minor changes in punctuation and phraseology.

### CHAPTER 15—PUBLIC EMPLOYEES' RETIREMENT SYSTEM—DEFINITIONS AND GENERAL PROVISIONS

#### Section

- 68-1501. Purpose of act.
- 68-1502. Retirement system created.
- 68-1503. Definitions.
- 68-1504. Short title.

**68-1501. Purpose of act.** The purpose of this act is to effect economy and efficiency in the public service by providing a means whereby employees who become superannuated or otherwise incapacitated may, without hardship, or prejudice, be replaced by more capable employees, and to that end providing a retirement system consisting of retirement compensation and death benefits.

**History:** En. 68-1501 by Sec. 2, Ch. 323, L. 1973.

#### Title of Act

An act for the codification and general revision of the laws relating to the public employees' retirement system and re-

pealing sections 68-101, 68-102, 68-201, 68-202, 68-203, 68-301, 68-302, 68-303, 68-401 through 68-405, 68-501, 68-601, 68-602, 68-603, 68-701 through 68-710, 68-801, 68-802, 68-901, 68-902, 68-1001 through 68-1005, 68-1101, 68-1201 and 68-1301 through 68-1320, R. C. M. 1947.

**68-1502. Retirement system created.** A retirement system is created and established to become effective July 1, 1945, and to be known as the public employees' retirement system.

**History:** En. 68-1502 by Sec. 3, Ch. 323, L. 1973.

**68-1503. Definitions.** Unless the context requires otherwise, in this act:

(1) "Retirement system" means the public employees' retirement system created by this act.

(2) "Head of department" means the head of any department, institution or branch of the state service which directly pays salaries out of its income or which prepares, approves and submits salary statements of its employees to the department of administration, state auditor and state treasurer for payment.

(3) "Member" means any person included in the membership of the retirement system set forth in section 68-1601 and not excluded in section 68-1602, 68-1603 or 68-2510.

(4) "Board" means the board of administration provided for in section 82A-210.

(5) "Employee" means any person employed by an employer in any capacity whatever and whose salary is paid either by warrant of the employer or from the fees or income of any department or agency of the employer. "Employee" means further any person deemed such pursuant to section 68-2510.

(6) "Retirement fund" means the public employees' retirement account in the agency fund.

(7) "Service" means employment of an employee, except as provided in sections 68-1604 and 68-1605.

(8) "Prior service" shall mean all service rendered as an employee of the state before July 1, 1945, and all service rendered as an employee of a contracting employer before July 1, 1947. Prior service includes all service rendered prior to July 1, 1945, as a member of the legislative assembly or lieutenant governor of the state of Montana.

(9) "Beneficiary" means the person so designated pursuant to section 68-2401.

(10) "Compensation" means remuneration paid out of funds controlled by an employer. The compensation of each member of the legislative assembly and the lieutenant governor of the state of Montana for any year shall be deemed to be that portion of the product of the daily compensation for such position multiplied by three hundred sixty (360), upon which such member elects to pay normal contributions during the year.

(11) "Final compensation" means a member's highest average annual compensation during any three (3) consecutive years of membership service.

(12) "Regular interest" means interest at the rate set from time to time by the board.

(13) "Normal contributions" means contributions required by members under this act and any optional contributions, made under the provisions of sections 68-1605 and 68-1906.

(14) "Additional contributions" means contributions by members under the provisions of section 68-1903.

(15) "Accumulated normal contributions" means the sum of all the normal contributions standing to the credit of a member's individual account without interest.

(16) "Accumulated additional contributions" means the sum of all the additional contributions standing to the credit of a member's individual account, together with the regular interest thereon.

(17) "Accumulated contributions" means the sum of accumulated normal contributions and accumulated additional contributions.

(18) "Pension" means payments for life derived from contributions made from the state controlled funds, or in the case of members from contracting employers, from the funds of such contracting employers, as provided in this act.

(19) "Annuity" means payments for life derived from contributions made by a member as provided in this act.

(20) "Retirement allowance" means the periodic benefit payable following service, early or disability retirement.

(21) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(22) "Actuary" means the actuary retained by the board in accordance with section 68-1804.

(23) "Benefit" means the retirement allowance, survivorship allowance, death benefit or refund of accumulated contributions provided by this act.

(24) "Contracting employer" means any political subdivision or governmental entity which has contracted to come into the system.

(25) "Employer" means the state of Montana, its university or any of the colleges, schools, components or units thereof for the purposes of this act, or any political subdivision or governmental entity which has contracted to come into the system.

(26) "Membership service" means service with respect to which normal contributions and employer contributions are paid. A member of the legislative assembly and a lieutenant governor of the state of Montana shall be credited with membership service for that portion of each year for which he pays normal contributions pursuant to section 68-1503 (10).

(27) "Survivorship allowance" means payments for life to the beneficiary of a deceased member as provided in Title 68, chapter 23.

(28) "Creditable service" means the aggregate of membership service and prior service. A member employed on a part-time basis shall receive credit for a year of service for each fiscal year during which such member was employed throughout the year and was engaged in his duties the full amount of time he was required by his employment to be so engaged.

(29) "Employer contributions" means payments to the retirement fund from appropriations of the state of Montana pursuant to section 68-2504 and from contracting employers pursuant to the contracts between them and the board.

(30) "Written application" means a written instrument duly executed and filed with the board and containing all information required by the board, including such proofs of age as the board shall deem necessary.

(31) "Retirement" means withdrawal from active service with a retirement allowance granted under the provisions of this act.

(32) "Disability" and "incapacity for performance of duty" referred to herein as a basis of retirement, means disability of permanent duration



or disability of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(33) "Fiscal year" means any year commencing with July 1 and ending June 30 next following.

**History:** En. 68-1503 by Sec. 4, Ch. 323, L. 1973; amd. Sec. 1, Ch. 190, L. 1974.

**Amendments**

The 1974 amendment substituted "set

forth in section 68-1601 and not excluded in section 68-1602, 68-1603 or 68-2510" in subdivision (3) for "set forth in section 68-1602 and not excluded in section 68-1603 or 68-2510."

**68-1504. Short title.** This act may be cited as "The Public Employees' Retirement System Act."

**History:** En. Sec. 1, Ch. 323, L. 1973.

## CHAPTER 16—MEMBERSHIP—SERVICE CREDITS

### Section

- 68-1601. Membership.
- 68-1602. Exclusions.
- 68-1603. Termination of membership.
- 68-1604. Absence not included in time of service.
- 68-1605. Absence in military service.
- 68-1605.1. Election to qualify military service for full credit.
- 68-1606. Absence due to illness or injury.
- 68-1607. Qualification of service with contracting employer.
- 68-1608. Qualification of prior service not previously credited.

**68-1601. Membership.** (1) All employees shall become members on the first day of employment. Each employee shall file with the board of administration such information affecting his status as a member of the retirement system as the board may require.

(2) Every employee who re-enters service shall become a member unless he has had an original election of exemption from membership and his service was not interrupted by a break of more than one (1) month. A seasonal employee who has had an original election of exemption from membership will not be subject to the requirement regarding the break in service while continuing in his original employment and employed on a seasonal basis, but upon termination of employment to accept new employment or absence of more than one (1) month in returning to original employment in any ensuing season, such a seasonal employee shall become a member of the retirement system upon re-entry.

(3) Time during which an employee of a school district is absent from service during official vacation shall be counted as service in determining eligibility for membership under this act.

**History:** En. 68-1601 by Sec. 5, Ch. 323, L. 1973.

**68-1602. Exclusions.** The following persons shall not become members of the retirement system:

(1) elective officers who have not filed with the board of administration written requests to become members; provided that any person so excluded from membership may later become a member by otherwise becoming an employee or by written request after a subsequent election

to office; and provided further that if he shall affirmatively exercise the option, the contributions of the employer, because of his membership, shall be the same as they would have been had he not been so excluded;

(2) inmates of state institutions who are allowed compensation for such service as they are able to perform;

(3) persons in state institutions principally for the purpose of training, but who receive compensation;

(4) independent contractors unless written contract specifies the creation of an employer-employee relationship for purposes of retirement coverage under the Public Employees' Retirement System Act;

(5) employees serving in employment which does not exceed the equivalent of sixty (60) working days in any fiscal year;

(6) employees in service on July 1, 1945, or prior thereto who filed with the board of administration an election not to become members; provided, any person so excluded from membership by his own election may become a member by meeting the requirements of the balance of this subsection. Such a person must file an election to become a member with the board of administration no later than July 1, 1975; provided, that any such person who is not an employee on July 1, 1974, may make such filing no later than one (1) year after subsequently becoming an employee. In either event, such person must thereupon pay to the retirement system the amount which he and his employer would have contributed had he not been so excluded plus interest which would have accumulated thereon. All benefits payable thereafter to such person shall be the same as if such person had never filed an election not to be a member;

(7) persons directly appointed by the governor, who do not file with the board of administration an election in writing to become members;

(8) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government or political subdivision thereof and who are receiving credit in such other system for service, it being the purpose of this section to prevent a person from receiving credit for the same service in two (2) retirement systems supported wholly or in part by public funds, and no person shall receive such credit under any circumstances; any member of the retirement system who, because of his employment by the state, shall be required to become a member of any such other systems, shall be considered solely for the purposes of making normal contributions as permanently separated from service; the accumulated contributions of any member who shall have died after becoming a member of such other system and before receiving said accumulated contributions, shall be paid to the beneficiary nominated by him to receive any death benefit payable under section 68-2301; employer contributions on the basis of compensation earned by members after the effective date of termination of membership herein because of the membership in such other system, shall be repaid to the employer; for the purpose of this section, persons receiving pensions, retirement allowances or other payments, from any source, on account of employment other than as an employee as defined in this act, shall not be considered, because of such receipt, members of any other retirement or pension

system; provided, however, that where an employer has entered into a collective bargaining agreement which includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the Internal Revenue Service for its employees, such employees shall remain eligible, if otherwise qualified, for membership in the retirement system, and the payments or contributions in lieu of wages shall not be deemed a part of the employee's compensation for purposes of computing the employer or employee contributions to the retirement system;

(9) court commissioners or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(10) persons who become employees after they have reached their sixtieth birthday and have no creditable service in this system, and who do not file with the board of administration an election to become members;

(11) employees of county hospitals or county rest homes in the sixth and seventh class counties unless they elect to file with the board of administration an election in writing to become members.

History: En. 68-1602 by Sec. 6, Ch. 323, Amendments  
L. 1973; amd. Sec. 1, Ch. 374, L. 1974.

The 1974 amendment added the proviso at the end of subdivision (8).

**68-1603. Termination of membership.** If any part of a member's accumulated normal contributions are refunded pursuant to section 68-1905, he ceases to be a member and all membership service to his credit is canceled. Any person who is retired ceases to be a member.

History: En. 68-1603 by Sec. 7, Ch. 323, L. 1973.

**68-1604. Absence not included in time of service.** Except as provided in section 68-1605 and 68-1606, time during which a member is absent from compensated employment with an employer shall not be allowed in computing service.

History: En. 68-1604 by Sec. 8, Ch. 323, L. 1973.

**68-1605. Absence in military service.** Any period of absence from compensated employment with an employer occurring either during a war involving the United States as a belligerent or in any other national emergency, and for ninety (90) days thereafter for one of the following reasons shall be considered as service, for the purpose of qualification for retirement and death benefits, but not for calculation of retirement benefits:

(1) by reason of having been ordered on duty with the armed forces of the United States;

(2) by reason of voluntary service in said forces or on ships operated by or for the United States government; or

(3) by reason of direct assignment to the department of war or defense for duties pursuant to the national defense efforts where a leave of absence has been granted by the employer.



Any member so absent shall have the right to contribute to the retirement system, either during his period of absence or upon his return to service, at times and in the manner fixed by the board of administration, amounts equal to the contribution which would have been made by him to the system on the basis of his compensation at the commencement of his absence. If he does so contribute he shall receive credit for service for such time in the same manner as if he had not been absent from service. Whenever a member elects to continue his contributions the employer shall thereupon contribute an amount equal to what its employer contributions would have been had the member not been absent from service.

Any member so absent shall lose the right to contribute under this section if all of his accumulated normal contributions are refunded pursuant to section 68-1905.

History: En. 68-1605 by Sec. 9, Ch. 323, L. 1973.

**68-1605.1. Election to qualify military service for full credit.** A member with ten (10) years or more of state service credited under this act may at any time prior to retirement make a written election with the board to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits up to a maximum of five (5) years if he is not otherwise eligible to receive credit for this same service pursuant to section 68-1605. To qualify this service he must contribute to the retirement fund the amount determined by the board to be due based on his compensation and normal contribution rate as of his eleventh year and as many succeeding years as are required to qualify this service with interest from the date he becomes eligible for this benefit to the date he so contributes. He may not qualify more of this service than he has state service in excess of ten (10) years.

History: En. 68-1605.1 by Sec. 10, Ch. 323, L. 1973.

**68-1606. Absence due to illness or injury.** Time during which a member is absent from service by reason of injury or illness determined within one (1) year after the end of such absence as arising out of and in the course of his employment shall be considered as spent in service for the purpose of qualification for retirement benefits or survivorship allowances, but not for the calculation of such benefits.

History: En. 68-1606 by Sec. 11, Ch. 323, L. 1973.

**68-1607. Qualification of service with contracting employer.** Subject to the provisions of this section, any person who has service with a contracting employer which is not creditable service may convert all or a portion of such service to membership service by filing written notice thereof with the board of administration no later than July 1, 1975; provided that any such person who is not a member on July 1, 1974, may make such filing no later than one (1) year after subsequently becoming

a member. In either event, such person must pay to the retirement system the sum of the amount which he and his employer would have contributed during the period of service so converted if the employer had then been a contracting employer and the interest which would have accumulated thereon to the time of such payment; provided, that the employer may pay the employer's portion including accrued interest. Payment may be made in one sum at the time of such filing or on an installment basis. Installment payments shall not exceed twenty-four (24) monthly payments. When the monthly payment exceeds five per cent (5%) of compensation in the initial month of payment the board of administration may allow smaller payments of a period to exceed twenty-four (24) months. Failure to make regular monthly payments in any month where the member receives his normal compensation shall thereafter, forfeit such person's right to make any further installment payments.

**History:** En. 68-1607 by Sec. 12, Ch. 323, L. 1973; amd. Sec. 2, Ch. 190, L. 1974.

#### **Amendments**

The 1974 amendment substituted the last three sentences for "except that failure to

make installment payments of at least ten per cent (10%) of compensation in any payroll period thereafter shall forfeit such person's right to make any further installments"; and made minor changes in phraseology and punctuation.

**68-1608. Qualification of prior service not previously credited.** Credit for any prior service not previously granted shall be granted to a member upon his filing written notice thereof with the board of administration no later than July 1, 1975; provided, that any such person who is not a member on July 1, 1974, may make such filing no later than one (1) year after subsequently becoming a member and further provided he otherwise has not less than ten (10) years of creditable service of which not less than three (3) years have been as a contributing member of the retirement system. Proper certification of such service must be furnished.

**History:** En. 68-1608 by Sec. 13, Ch. 323, L. 1973.

## **CHAPTER 17—CONTRACTS WITH POLITICAL SUBDIVISIONS—ELECTIONS**

### **Section**

- 68-1701. Contracts with political subdivisions—election—ballot.
- 68-1702. Request by individual employee for employer to participate.
- 68-1703. Conversion of local or state retirement plan.
- 68-1704. Tax levy to meet employer's obligations.

**68-1701. Contracts with political subdivisions—election—ballot.** Any municipal corporation, county or public agency in the state may become a contracting employer and make all or specified groups of its employees members of the retirement system by a contract entered into between the board and the legislative body of said contracting employer, subject to the provisions of this act. The contract may include any provisions which are consistent with this act and necessary in the administration of the retirement system as it affects the contracting employer and its employees. The approval and termination of the contract shall be subject to the following provisions, in addition to the other provisions of this act.

(1) The legislative body of the contracting employer shall adopt a resolution giving notice of intention to approve the contract and contain-

ing a summary of the major provisions of the retirement system. The contract shall not be approved unless the employees proposed to be included in the retirement system adopt the proposal by a majority affirmative vote in a secret ballot. The ballot at such election shall include the summary of the retirement system as set forth in the resolution. The election shall be conducted as prescribed by the legislative body of the contracting employer. Approval of the contract shall be by ordinance adopted by the affirmative vote of two-thirds (2/3) of the members of the legislative body, not less than twenty (20) days after the adoption of the resolution or by an ordinance adopted by a majority vote of the electorate of the contracting employer voting thereon.

(2) The contract shall specify that all employees of the contracting employer or such groups of employees as agreed to between the board and the contracting employer shall become members. The groups of employees to be included shall be by departments, duties, age or other similar classifications and not by individual employees. The board shall have the right to disapprove any classification into groups if in its opinion said classification affects adversely the interest of the retirement system. Membership in the retirement system shall be compulsory for all employees included under the contract.

(3) The contract may be amended in the manner prescribed in this section for the original approval of contracts. Groups of excluded employees may be subsequently included by amendment.

**History:** En. 68-1701 by Sec. 14, Ch. 323, L. 1973.

**68-1702. Request by individual employee for employer to participate.** Any employee who has continuously been, for a period of at least two (2) years, an employee of a municipal corporation, county or other public agency of this state which is not a contracting employer may advise the legislative body of his employer, in writing, that he wishes to participate in the retirement system. Within thirty (30) days after receipt of such written request, the legislative body shall thereupon adopt the resolution of intention and take such action as provided for in section 68-1701.

**History:** En. 68-1702 by Sec. 15, Ch. 323, L. 1973.

**68-1703. Conversion of local or state retirement plan.** Should the legislative body of any city, county or public agency having an existing retirement, pension or annuity fund or system, hereafter referred to as the local system, desire to make the members of the local system members of the public employees' retirement system, it may enter into a contract for that purpose with the board of administration in the manner provided in section 68-1701 provided, however, that the employees voting as provided in subsection (1) of section 68-1701 shall be limited to active members of the local system and approval shall require an affirmative vote of two-thirds (2/3) of such employees.

All active members of the local system shall become members of the retirement system and shall no longer be members of the local system. The pensions being paid to pensioners or annuitants of the local system on the effective date of the contract shall be continued and paid at their



existing rates by the public employees' retirement system. The liability for such pensions shall be computed by the actuary and charged to the contracting employer. All cash and securities held by the local system shall be transferred to the retirement system as of the effective date of the contract and credited to the employer. The value of said securities shall be determined by the board of administration.

The trustees or other administrative head of the local system as of the effective date of the contract shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions of the active members, and the relative shares of the members as of that date. Such shares shall be charged to the employer and credited to the respective individual accounts of such members in the public employees' retirement system and administered as if said contributions had been made during membership in the retirement system. Any excess of employer credits over charges under this section will be offset, with interest, against future required employer contributions. Any excess of employer charges over credits under this section shall be payable by the contracting employer, with interest, on a monthly basis as specified in the contract.

**History:** En. 68-1703 by Sec. 16, Ch. 323, L. 1973.

**68-1704. Tax levy to meet employer's obligations.** If the contributions required to the retirement system exceed the funds available to a contracting employer from general revenue sources, the contracting employer shall have authority to budget, levy and collect annually a special tax upon the assessable property of the contracting employer in the number of cents per one hundred dollars (\$100) of assessable property as will be sufficient to raise the amount estimated by the legislative body to be required to provide sufficient revenue to meet the obligation of the contracting employer to the retirement system. The rate of taxation may be in addition to the annual rate of taxation allowed by law to be levied by the contracting employer. Any person who is a member or beneficiary of the retirement system on account of the participation of the contracting employer shall have the right to maintain the appropriate action or proceeding to require performance of the duty imposed on the legislative body by this section.

**History:** En. 68-1704 by Sec. 17, Ch. 323, L. 1973.

#### CHAPTER 18—BOARD OF ADMINISTRATION

##### Section

- 68-1801. Location of board—quorum—appointment of committee—election of president.
- 68-1802. Compensation and expenses of board members.
- 68-1803. Rules and regulations—records—annual report by board.
- 68-1804. Employment of actuary—biennial investigation and valuation.

**68-1801. Location of board—quorum—appointment of committee—election of president.** The board shall maintain its office in the city of Helena. A quorum of the board shall be three (3) members. The board shall elect one of its members president. The board may appoint a committee of one or more of its members, which shall have authority to perform routine

acts, such as retirement of members and fixing of retirement allowances, approval of death claims and correction of records necessary in the administration of the system in accordance with the provisions of this act and rules and regulations of the board. The department of administration shall appoint and fix the compensation of the administrator and other necessary employees. The attorney general shall be the legal counsel for the board.

**History:** En. 68-1801 by Sec. 18, Ch. 323, L. 1973.

**68-1802. Compensation and expenses of board members.** The actual and necessary expenses of members of the board shall be reimbursed by the retirement system. Those members of the board who are not members of the retirement system shall be entitled to receive in addition to actual and necessary expenses compensation at the rate of twenty-five dollars (\$25) per day. All expenses of the administration of this act in excess of the amounts provided by the membership fees contributed pursuant to section 68-1904 shall be a charge on the appropriation made from the general fund of the state.

**History:** En. 68-1802 by Sec. 19, Ch. 323, L. 1973.

**68-1803. Rules and regulations—records—annual report by board.** (1) The board of administration may establish such rules and regulations as it deems proper for the administration and operation of the retirement system and enforcement of this act, subject to its limitation. The board shall determine who are employees within the meaning of this act. The board shall be the sole authority under this act as to the conditions under which persons may become members and receive benefits under the retirement system. The board shall determine and may modify allowances for service and disability under this act. The board shall establish those uniform rules and regulations as are necessary to determine credit for fractional years of service. The board shall maintain such records and accounts it determines necessary for the administration of this act. Upon the basis of the findings of the actuary pursuant to section 68-1804, the board shall adopt those actuarial tables and those rates of regular interest it determines appropriate to comply with the provisions of this act.

(2) As soon as practical after the close of each fiscal year, the department of administration shall file with the governor a report of its work for that fiscal year. The report shall include a statement as to the accumulated cash and securities in the retirement fund as certified by the state treasurer and the board of investment. The report shall also include the most recent unpublished report of the actuary of the actuarial valuation of the assets and liabilities of the system.

**History:** En. 68-1803 by Sec. 20, Ch. 323, L. 1973.

**68-1804. Employment of actuary—biennial investigation and valuation.** The board shall retain on a full-time basis, a competent actuary who is a member of the American academy of actuaries and who is

familiar with public systems of pensions. The actuary shall be the technical advisor of the board on matters regarding the operation of the system. Biennially he shall make an actuarial investigation into the suitability of the actuarial tables used by the system and an actuarial valuation of the assets and liabilities of the retirement system. From time to time, he shall also determine the rate of interest being earned on the retirement fund. He shall report his findings to the board.

History: En. 68-1804 by Sec. 21, Ch. 323, L. 1973.

#### CHAPTER 19—MANAGEMENT OF FUND—EMPLOYER AND EMPLOYEE CONTRIBUTIONS

##### Section

68-1901. Management of fund.

68-1902. Members' contributions—deduction from pay.

68-1903. Additional contributions allowed.

68-1904. Employer contribution to administrative expense.

68-1905. Refund of contributions on termination of service.

68-1906. Reinstatement after withdrawal of contributions—redeposit of contributions.

68-1907. Transfer of dormant savings account to pension fund.

**68-1901. Management of fund.** The retirement fund shall be managed as follows:

(1) The board of administration shall have exclusive control of the administration of the fund except as otherwise provided.

(2) The fund shall be invested by the state board of investments as part of the long-term investment fund.

(3) The department of administration shall deposit monthly in the state treasury all amounts received by it as provided in this act.

(4) The state treasurer shall be custodian of the retirement fund, subject to the exclusive control of the board of administration as to the administration thereof and the board of investments as to the investment thereof.

(5) Interest earned on any cash deposit in a bank by the state treasurer and income on other assets constituting a part of the fund shall be paid into the fund as received. Income, of whatever nature, earned on the retirement fund during any fiscal year, in excess of the interest credited to contributions during that year shall be retained in the fund as a reserve against deficiencies in interest earned in other years, losses under investments, and other contingencies.

(6) Except as herein provided, no member and no employee of the department of administration shall have any interest direct, or indirect, in the making of any investment, or in the gains or profits accruing therefrom. And no member or employee of the department directly or indirectly, for himself or as an agent or partner of others, may borrow any of its funds or deposits, nor shall any member or employee in any manner use the same except to make such current and necessary payments as are authorized by the department nor shall any member or employee of the department become an endorser or surety as to or in any manner an obligor for investments for the retirement system.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973.



**68-1902. Members' contributions—deduction from pay.** The normal contribution of each member shall be equal to five and seventy-five one hundredths per cent (5.75%) of his compensation. The chief administrative officer of each employer shall deduct the contribution from the compensation of each member and remit the total of the contributions to the board. Payment of salaries or wages less the contribution shall be full and complete discharge and acquittance of all claims and demands whatsoever for the service rendered by members during the period covered by the payment, except their claims to the benefits to which they may be entitled under the provisions of this act.

History: En. 68-1902 by Sec. 23, Ch. 323, L. 1973.

**68-1903. Additional contributions allowed.** Subject to the rules and regulations promulgated by the board of administration, any member may elect to contribute at rates in excess of those provided for in section 68-1902 for the purpose of providing additional benefits, but the exercise of this privilege by a member shall not place on the state or contracting employer any additional financial obligation. The board, upon application shall furnish to the member information concerning the nature and amount of additional benefits to be provided by additional contributions.

History: En. 68-1903 by Sec. 24, Ch. 323, L. 1973.

**68-1904. Employer contribution to administrative expense.** (1) The board of administration may assess, and the department of administration shall collect a fee for the purpose of defraying the administrative expense of this act not to exceed three-tenths of one per cent (.3%) of gross compensation.

(2) In addition to the contributions elsewhere provided in this act, on July 1 of each year each employer shall contribute on behalf of each member then in its employ a membership fee of one dollar (\$1). These fees together with other moneys appropriated for that purpose shall be used for the purpose of defraying the administrative expense of this act.

History: En. 68-1904 by Sec. 25, Ch. 323, L. 1973; amd. Sec. 3, Ch. 190, L. 1974.

**Amendments**

The 1974 amendment inserted subsection (1).

**68-1905. Refund of contributions on termination of service.** (1) Except as provided in this section, any member whose service has been discontinued by other than death or retirement shall be paid such part of his accumulated contributions as he requests. If he has ten (10) or more years of creditable service, the amount paid shall include regular interest on the accumulated normal contributions. If he has less than ten (10) years of service and he does not re-enter service for a period of five (5) years after such discontinuance, he shall automatically be paid any portion of his total accumulated contributions not previously withdrawn. Upon qualification for any other benefit under this act, a member having any accumulated normal contributions standing to his credit in the retirement fund shall receive the benefit based upon the creditable service during

which such contributions were made. The board may, in its discretion, withhold for not more than one (1) year after a member last rendered service, all or part of his accumulated normal contributions if after a previous discontinuance of service he withdrew all or part of his normal contributions and failed to redeposit such withdrawn amount in the retirement fund as provided in section 68-1906.

(2) Should the state service of any member, regardless of years of service, be discontinued other than by death or retirement after July 1, 1974, he shall be paid such part of his accumulated contributions, including regular interest thereon, as he requests.

History: En. 68-1905 by Sec. 26, Ch. 323, L. 1973.

**68-1906. Reinstatement after withdrawal of contributions—redeposit of contributions.** Except as otherwise provided in this section, any person who again becomes a member subsequent to the refund of his accumulated normal contributions after a termination of previous membership is considered a new member without credit for any previous membership service, and he may reinstate that membership service by redepositing, within two (2) years of his re-entering the retirement system, the sum of the accumulated normal contributions which were refunded to him at the last termination of his membership plus the interest which would have been credited to his account had the refund not taken place. If he makes this redeposit, his membership shall be the same as if unbroken by such last termination. Regardless of whether this redeposit is made, the documents held by the retirement system as executed by the member prior to termination of membership shall be held by the system for the same purposes as prior to termination, and beneficiaries nominated in the documents shall continue unchanged until changed as provided herein.

History: En. 68-1906 by Sec. 27, Ch. 323, L. 1973.

**68-1907. Transfer of dormant savings account to pension fund.** The board may in its discretion transfer the savings account of a member to the pension accumulation fund if the account has been dormant for a period of ten (10) years provided that no right of the member shall be jeopardized by such transfer and the savings account shall be transferred to the member's name upon subsequent re-entry to membership.

History: En. 68-1907 by Sec. 28, Ch. 323, L. 1973.

## CHAPTER 20—SERVICE RETIREMENT ELIGIBILITY AND ALLOWANCES

### Section.

- 68-2001. Eligibility for service retirement—early retirement.
- 68-2002. Time for commencement of allowance.
- 68-2003. Annual amount of retirement allowance payable.
- 68-2004. Excess allowance to members on July 1, 1973.
- 68-2005. Early retirement allowance.

**68-2001. Eligibility for service retirement—early retirement.** (1) A member who has attained the age of sixty (60) and completed ten (10)

years of creditable service is eligible for service retirement. A member who has attained age sixty-five (65) is eligible for service retirement regardless of his years of creditable service. A member who has completed thirty (30) years or more of state service is eligible for service retirement regardless of his age.

(2) A member who is not eligible for service retirement but has attained age fifty-five (55) and completed ten (10) years of creditable service is eligible for early retirement.

History: En. 68-2001 by Sec. 29, Ch. 323, L. 1973.

**68-2002. Time for commencement of allowance.** The board shall grant a retirement allowance to any member who has fulfilled the eligibility requirements of section 68-2001 and filed the appropriate written application. The retirement allowance shall commence on the day following the member's last day of membership service or on the first day of the month in which his application is filed with the board, whichever is later.

History: En. 68-2002 by Sec. 30, Ch. 323, L. 1973.

**68-2003. Annual amount of retirement allowance payable.** The annual amount of retirement allowance payable to a member following his service retirement is the sum of (1), (2) and (3) as follows:

(1) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;

(2) one sixty-fifth ( $1/65$ ) of his final compensation multiplied by the number of years of his creditable service;

(3) any retirement allowance payable under section 68-2004.

History: En. 68-2003 by Sec. 31, Ch. 323, L. 1973.

**68-2004. Excess allowance to members on July 1, 1973.** The annual amount of retirement allowance payable to a person who was a member on July 1, 1973, shall be increased by the excess, if any, of the greater of (1) or (2) as follows over subsection (2) of section 68-2003:

(1) the sum of a pension for prior service equal to one sixty-fifth ( $1/65$ ) of his final compensation multiplied by the number of years of his prior service, an annuity which is the actuarial equivalent of his accumulated normal contributions with regular interest to the day his retirement allowance commences, and a pension for membership service equal to such annuity;

(2) if the member attained age seventy (70) in service, the lesser of four hundred eighty dollars (\$480) or one-half ( $1/2$ ) of his final compensation.

History: En. 68-2004 by Sec. 32, Ch. 323, L. 1973.

**68-2005. Early retirement allowance.** The annual amount of retirement allowance payable to a member following his early retirement is the actuarial equivalent of the accrued portion of the service retirement



allowance which would have been payable to him commencing at age sixty (60) pursuant to section 68-2003.

History: En. 68-2005 by Sec. 33, Ch. 323, L. 1973.

#### CHAPTER 21—DISABILITY RETIREMENT ELIGIBILITY AND ALLOWANCE

##### Section

68-2101. Disability retirement eligibility—definitions—medical examinations—hearings—waiver.

68-2102. Application for disability retirement allowance.

68-2103. Annual allowance for duty-related disability—reduction for workmen's compensation.

68-2104. Annual allowance for nonduty-related disability—reduction for misconduct.

**68-2101. Disability retirement eligibility—definitions—medical examinations—hearings—waiver.** (1) A member who has not reached seventy (70) years of age but has become disabled for duty-related reasons, as defined in subsections (3) and (4) of this section, is eligible for disability retirement.

(2) A member who is not eligible for service or early retirement but has completed ten (10) years of creditable service and has become disabled while in active service for other than duty-related reasons, as defined in subsections (3) and (4) of this section, is eligible for disability retirement.

(3) "Disabled" means unable to perform his duties by reason of physical or mental incapacity.

(4) "Duty-related" means as a result of an injury or disease arising out of or in the course of his employment with an employer.

(5) "Injury" means a tangible happening of a traumatic nature from an unexpected cause, or unusual strain, resulting in either external or internal physical harm, and such physical conditions as result therefrom, and excluding disease not traceable to injury.

(6) The board shall determine whether a member has become disabled and whether a disabled member became disabled for duty-related reasons. In the discharge of its duty regarding such determinations, the board, any member thereof or any duly authorized representative of the board shall have power to order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a claim for disability retirement. The board shall secure medical service and advice necessary to carry out the purposes of this section and of sections 68-2201 and 68-2202 and shall pay for those medical services and advice compensation the board deems reasonable.

(7) A member eligible for early retirement may conditionally waive such eligibility by written application, such waiver to be effective only upon approval by the board of his application for disability retirement.

History: En. 68-2101 by Sec. 34, Ch. 323, L. 1973.

## DECISIONS UNDER FORMER LAW

**Incapacity Not Result of Employment**

District court improperly reversed decision of board which refused relator's claim for an occupational disability retirement allowance based upon job-related disability caused by adverse working conditions and granted relator ordinary disability retirement allowance since district

court substituted its judgment for that of board and since "disease" as used in former section 68-901, did not include "personality disorders, anxiety reactions, or difficulties in getting along with one's superiors or fellow workers." State ex rel. Bailey v. Grande, 154 M 437, 465 P 2d 334.

**68-2102. Application for disability retirement allowance.** The board shall grant a retirement allowance to any member who has fulfilled the eligibility requirements of section 68-2101 and duly filed the appropriate written application. An application may be filed on a member's behalf by the head of the office or department in which the member is or was last employed or by any other person on behalf of the member, or the board upon its own motion may make the application. Application must be made within four (4) full months after the member's discontinuance of service unless the member is disabled continuously from the date of discontinuance of service to the date of the application.

The retirement allowance payable to a member who has become disabled shall commence on the day following the member's last day of membership service.

**History:** En. 68-2102 by Sec. 35, Ch. 323, L. 1973.

**68-2103. Annual allowance for duty-related disability—reduction for workmen's compensation.** The annual amount of retirement allowance payable to a member eligible for disability retirement for duty-related reasons is fifty per cent (50%) of his final compensation; provided, however, that the annual amount of retirement allowance shall be twenty-five per cent (25%) of final compensation for any period during which the member has been awarded compensation by the workmen's compensation division, whether or not such compensation is received in periodic payments or in a lump sum; provided further, that the annual amount of retirement allowance shall revert to fifty per cent (50%) of final compensation at the end of such period.

**History:** En. 68-2103 by Sec. 36, Ch. 323, L. 1973.

**68-2104. Annual allowance for nonduty-related disability—reduction for misconduct.** The annual amount of retirement allowance payable to a member eligible for disability retirement for other than duty-related reasons is the sum of (1), (2) and (3) as follows:

(1) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;

(2) an annuity which is the actuarial equivalent of his accumulated normal contributions with normal interest to the day his retirement allowance commences;

(3) if, in the opinion of the board, the disability is not due to intemperance, willful misconduct or violation of law on the part of the member, a pension which is the lesser of (a) or (b) as follows:

(a) a pension which, together with the annuity provided under (2), shall make the retirement allowance equal to ninety per cent (90%) of one sixty-fifth ( $1/65$ ) of his final compensation multiplied by his years of creditable service;

(b) a pension equal to twenty-five per cent (25%) of his final compensation.

History: En. 68-2104 by Sec. 37, Ch. 323, L. 1973.

#### CHAPTER 22—REDUCTION OR CANCELLATION OF ALLOWANCE

##### Section

- 68-2201. Medical examination of disability retiree—cancellation and reinstatement if retiree capable—refund of contributions.  
68-2202. Disability allowance reduced by earnings.  
68-2203. Optional retirement allowance.  
68-2204. Cancellation of retirement allowance upon re-employment.

**68-2201. Medical examination of disability retiree—cancellation and reinstatement if retiree capable—refund of contributions.** (1) The board may, at its pleasure, require the recipient of a retirement allowance because of disability to undergo medical examination. The examination shall be made by a physician or surgeon appointed by the board, at the place of residence of the recipient or another place mutually agreed upon. Upon the basis of the examination the board shall determine whether said recipient is unable, by reason of physical or mental incapacity, to perform either the duties of the position held by him when he was retired or the duties proposed to be assigned to him. If the board determines that said recipient is not so incapacitated or if the recipient refuses to submit to medical examination, his retirement allowance shall be canceled.

(2) Any person whose retirement allowance is so canceled shall be reinstated to the position held by him immediately before his retirement or to a position in the same classification with duties within his capacity, if he had been an employee of the state or of the university. If he had been an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the retirement allowance has been canceled and that the former employee is eligible for reinstatement to duty. The fact that he was retired for disability shall not prejudice any right to reinstatement to duty which he may have or claim to have.

(3) If any person whose retirement allowance is so canceled is not re-employed in a position subject to the retirement system, his service shall be deemed to be discontinued coincident with his retirement allowance for the purposes of section 68-1905.

History: En. 68-2201 by Sec. 38, Ch. 323, L. 1973.

**68-2202. Disability allowance reduced by earnings.** Should the recipient of a retirement allowance because of disability engage in a gainful occupation during any month other than as an employee as defined in section 68-1503, the amount of his retirement allowance for that month shall be reduced to an amount which, when added to the compensation earned



by him in that occupation, shall not exceed the amount of his monthly compensation at the time of his retirement.

History: En. 68-2202 by Sec. 39, Ch. 323, L. 1973; amd. Sec. 4, Ch. 190, L. 1974.

#### Amendments

The 1974 amendment substituted "retirement allowance" for "pension" before "for that month."

**68-2203. Optional retirement allowance.** (1) The retirement allowance of a member who so elects shall be converted, in lieu of all other benefits under this act, into an optional retirement allowance which is the actuarial equivalent of such other allowance. The optional retirement allowance is a reduced amount payable during the member's lifetime with a subsequent benefit as follows:

(a) Option 1—a death benefit to the member's beneficiary equal to the excess, if any, of the member's accumulated contributions with regular interest to the day his retirement allowance commenced over the total of his retirement allowance payments.

(b) Option 2—a continuation of the reduced retirement allowance during the lifetime of his named contingent annuitant.

(c) Option 3—a continuation of one-half ( $\frac{1}{2}$ ) of the reduced retirement allowance during the lifetime of his named contingent annuitant.

(d) Option 4—such other actuarially equivalent benefit as shall be approved by the board.

(e) Option 5—such other actuarially equivalent benefit as shall be approved by the board.

(2) Election of any optional retirement allowance shall be by written application filed prior to the first payment of the regular retirement allowance. The contingent annuitant named by the member must have an insurable interest in the life of the member.

(3) If either the member or his contingent annuitant should die before the member has received the first payment under option 2 or 3, the election of such option shall automatically be canceled.

(4) If a member dies after retirement and within thirty (30) days from the date his election or changed election of an optional retirement allowance is received by the board, then said election is void and of no effect, and the death shall be considered as that of a member before retirement.

History: En. 68-2203 by Sec. 40, Ch. 323, L. 1973; amd. Sec. 5, Ch. 190, L. 1974.

section (1) an option which read "an actuarial equivalent benefit based on the life of a single designated beneficiary."

#### Amendments

The 1974 amendment deleted from sub-

**68-2204. Cancellation of retirement allowance upon re-employment.**

(1) Any person receiving a retirement allowance who becomes an employee shall be considered reinstated from retirement and his retirement allowance shall be canceled. Upon subsequent retirement he shall be entitled to receive a recalculated benefit as provided in section 68-2003. Such recalculated benefit shall be based on his creditable service accumulated at the time of his previous retirement plus any creditable service accumulated

subsequent to his re-employment. Except as otherwise expressly provided by law, he shall receive the benefit of provisions enacted subsequent to his initial retirement only if he accrues at least two (2) years of creditable service subsequent to his reinstatement and then only with respect to such creditable service.

(2) Any person receiving a service retirement allowance not as a beneficiary who is not eligible for membership may return to covered employment for a period not to exceed sixty (60) working days in any fiscal year. The retirement allowance of a retiree so employed will be reduced by any earnings in excess of the minimum wage per month on one dollar (\$1) for one dollar (\$1) basis.

History: En. 68-2204 by Sec. 41, Ch. 323, L. 1973; amd. Sec. 6, Ch. 190, L. 1974.

#### Amendments

The 1974 amendment added subsection (2).

### CHAPTER 23—DEATH BENEFITS

#### Section

- 68-2301. Death benefits—eligibility.
- 68-2302. Amount of death benefit.
- 68-2303. Election of optional death benefit by beneficiary.
- 68-2304. Survivorship allowance elected by beneficiary.
- 68-2305. Amount of survivorship allowance.

**68-2301. Death benefits—eligibility.** The board shall grant a death benefit to the beneficiary of any member or former member who dies in any of the following statuses:

- (1) while in service;
- (2) within four (4) months after the discontinuance of service but before retirement;
- (3) while a recipient of a retirement allowance because of disability, if such allowance has been in effect less than four (4) months;
- (4) while disabled, as defined in section 68-2101, if he has been continuously so disabled from the discontinuance of his service but he is not receiving a retirement allowance because of the disability.

History: En. 68-2301 by Sec. 42, Ch. 323, L. 1973.

**68-2302. Amount of death benefit.** The amount of death benefit is the sum of (1) and (2), as follows:

- (1) the member's accumulated contributions, together with regular interest on the accumulated normal contributions to the date of the member's death;
- (2) an amount equal to one-twelfth (1/12) of the compensation received by the member during the last twelve (12) months of such compensation multiplied by the smaller of six (6) or the number of years of his creditable service; provided, however, that this portion of the death benefit is not payable if the board receives a certification from the workmen's compensation division of the state of Montana that it is paying compensation because the member's death resulted from injury or disease arising out of or in the course of employment.

History: En. 68-2302 by Sec. 43, Ch. 323, L. 1973.

**68-2303. Election of optional death benefit by beneficiary.** A member or his beneficiary after his death may elect to have the death benefit paid in an actuarially equivalent form subject to such rules and regulations as the board may adopt. Election of an optional death benefit shall be by written application.

**History:** En. 68-2303 by Sec. 44, Ch. 323, L. 1973.

**68-2304. Survivorship allowance elected by beneficiary.** A beneficiary eligible to receive a death benefit may elect a survivorship allowance instead if all of the following conditions are met:

(1) the member on behalf of whom the death benefit is payable had completed ten (10) years of creditable service;

(2) the beneficiary is a natural person of legal age with an insurable interest in the deceased at the time of his death;

(3) the beneficiary elects the survivorship allowance within ninety (90) days of receipt of notice from the board that he is eligible to receive the death benefit. Election shall be by written application.

**History:** En. 68-2304 by Sec. 45, Ch. 323, L. 1973; amd. Sec. 7, Ch. 190, L. 1974. completed ten (10) years of creditable service" in subdivision (1) for "was eligible for service retirement or early retirement."

**Amendments**

The 1974 amendment substituted "had

**68-2305. Amount of survivorship allowance.** The annual amount of survivorship allowance payable to a member's beneficiary shall be the actuarial equivalent of either:

(1) the accrued portion of the service retirement allowance which would have been payable to the member commencing at age sixty (60) pursuant to section 68-2003, if he had not attained age sixty (60) at the time of his death; or

(2) if the deceased member had attained age sixty (60) or completed thirty (30) years of service at the time of his death, the service retirement allowance which would have been payable to the member if he had retired immediately prior to his death.

**History:** En. 68-2305 by Sec. 46, Ch. 323, L. 1973; amd. Sec. 8, Ch. 190, L. 1974.

**Amendments**

The 1974 amendment substituted "actuarial equivalent of either" in the first sentence for "the same as the optional retire-

ment allowance would have been if the member had retired immediately prior to his death after having elected an option 4 retirement allowance with the beneficiary as the contingent annuitant"; and added subdivisions (2) and (3).

## CHAPTER 24—BENEFICIARIES

### Section

68-2401. Designation of beneficiary—effect of no designation.

68-2402. Minor beneficiaries—small amounts paid to custodian.

**68-2401. Designation of beneficiary—effect of no designation.** (1) The beneficiary of a member shall be such person as the member shall so designate in the appropriate written application. A member may revoke



such designation and name a different beneficiary by filing a revised written instrument with the board. If no living beneficiary is designated, the estate of the member shall be the beneficiary. If the estate would not be probated but for the amount due from the retirement system, all of the amount due, including retirement allowances accrued but not received prior to death, shall be paid directly without probate to the surviving next of kin of the deceased, or the guardians of said survivor's estate, share and share alike, payment to be made in the same order in which the following groups are listed:

- (a) husband or wife, or
- (b) children, or
- (c) father and mother, or
- (d) grandchildren, or
- (e) brothers and sisters, or
- (f) nieces and nephews.

(2) No payment shall be made to persons included in any of said groups if at the date of payment there be living persons in any of the groups preceding it, as listed. Payment shall be made upon receipt from said persons of an affidavit, upon a form supplied by the retirement board, that there are no living individuals in the groups preceding it and that the estate of the deceased will not be probated. The payment shall be in full and complete discharge and acquittance of the board and system on account of said death.

(3) If a member's beneficiary cannot be found within ninety (90) days of the member's death or if the estate of the member is his beneficiary, the board in its discretion may pay all or a portion of the death benefit to the undertaker who conducted the funeral of the member or to any person or organization who paid the undertaker; provided, however, the amount so paid by the board shall not exceed the funeral expenses or the portion of such expenses paid by the person or organization respectively, all as evidenced by the sworn itemized statement of the undertaker and by other documents the board may require. The payment shall be in full and complete discharge and acquittance of the board and system up to the amount so paid, anything in this act to the contrary notwithstanding.

**History:** En. 68-2401 by Sec. 47, Ch. 323, L. 1973.

**68-2402. Minor beneficiaries—small amounts paid to custodian.** If any benefit from the system not to exceed five hundred dollars (\$500) is payable to a minor who has no guardian of his estate, the benefit may be paid to the person entitled to the custody of a minor to hold for the minor upon execution and filing with the board of a written statement by such person that the total estate of the minor does not exceed one thousand dollars (\$1,000) in value. The payment shall be in full and complete discharge and acquittance of the board and system on account of said benefit. The person shall account to the minor for the money when the minor reaches the age of majority.

**History:** En. 68-2402 by Sec. 48, Ch. 323, L. 1973.

## CHAPTER 25—ADMINISTRATION OF CONTRIBUTIONS AND ALLOWANCES

## Section

- 68-2501. Monthly payments—combining installments.
- 68-2502. Allowances exempt from execution, taxes, creditor process.
- 68-2503. Estimate of allowance when information incomplete.
- 68-2504. Employer contribution rates—actuarial determination.
- 68-2505. Payment of state contributions—budget and appropriations.
- 68-2506. Transfers between funds.
- 68-2507. Payment of contributions by contracting employer.
- 68-2508. Budget act superseded.
- 68-2509. Adjustment of errors in payments.
- 68-2510. Federally subsidized employees eligible—national guardsmen.
- 68-2511. Transfer of credits to and from teachers' retirement system.
- 68-2512. Reports by employers on status of employees.
- 68-2513. Cost-of-living increases.
- 68-2514. Retention of previously conferred benefits.

**68-2501. Monthly payments—combining installments.** A retirement allowance or survivorship allowance granted under the provisions of this act shall be payable in monthly installments, except that the board at its discretion may convert payments of less than twenty dollars (\$20) per month to larger periodic payments which are the actuarial equivalent of such smaller payments, but which occur less frequently. If payments of at least twenty dollars (\$20) per year are not so payable, the payment may be commuted into a single sum. A smaller pro rata amount may be paid for part of a month when the retirement allowance begins after the first day of the month or ends before the last day of the month.

**History:** En. 68-2501 by Sec. 49, Ch. 323, L. 1973.

**68-2502. Allowances exempt from execution, taxes, creditor process.** The right of a person to a retirement allowance or any other benefit under this act and the moneys in the fund created under this act shall not be subject to execution, garnishment, attachment, state or municipal taxes, or any other process whatsoever, and shall be unassignable except as in this act specifically provided.

**History:** En. 68-2502 by Sec. 50, Ch. 323, L. 1973.

**68-2503. Estimate of allowance when information incomplete.** If it shall be impracticable for the board of administration to determine from the records the length of service, the compensation or the age of any members, or if any member refuses or fails to give the board a statement of his state service, his compensation or his age, the said board may estimate, for the purposes of this act, such length of service, compensation or age.

**History:** En. 68-2503 by Sec. 51, Ch. 323, L. 1973.

**68-2504. Employer contribution rates—actuarial determination.** (1) Each employer shall contribute to the cost of benefits under the system. The amount of the employer contributions shall be computed by applying to member's compensation the sum of the current service contribution rate and the unfunded liability contribution rate. The sum of these rates shall

be four and six-tenths per cent (4.6%) from July 1, 1973, to June 30, 1975, and four and nine-tenths per cent (4.9%) from July 1, 1975, and thereafter.

(2) The actuary shall determine the current service contribution rate to be that level percentage of the present value of the future compensation of the average new member entering the system which equals the then present value of the excess of all prospective benefits in respect of such member over the member's own normal contributions.

(3) The actuary shall determine the minimum unfunded liability contribution rate to be that level percentage of the present value of the prospective compensation of all members for the forty (40) year period following the date of the determination which is equal to the unfunded liability on that date. The unfunded liability at any time is the excess of the present value of all future benefits payable in respect of all persons then entitled to benefits under the system over the sum of the retirement fund and the present values of the future current service contributions and normal contributions payable in respect of all such persons.

History: En. 68-2504 by Sec. 52, Ch. 323, L. 1973.

#### **68-2505. Payment of state contributions—budget and appropriations.**

(1) No later than the tenth day of each month, each department, board, commission, bureau or other agency of the state shall certify to the state auditor all contributions required of such unit and to its employees under this act on the basis of compensation paid during the previous month, including any contributions payable with respect to members absent in the armed forces of the United States. The state auditor shall thereupon draw a warrant upon the state treasurer for such contributions. The warrant shall be drawn to the credit of the retirement fund on the funds appropriated to that unit.

(2) Every state employer shall include in his budget and request for legislative appropriations an amount necessary to defray the state's part of the costs of this act for employees in their respective departments, and to the end that the legislature may make definite appropriation for the cost incurred by each employer whose employees are within the retirement system created by this act.

History: En. 68-2505 by Sec. 53, Ch. 323, L. 1973.

**68-2506. Transfers between funds.** Any fund out of which payments are made under the provisions of this act may be reimbursed to the extent of such payments by transfer of a sufficient sum for such reimbursement from another fund or funds under the control of the same disbursing officer. The disbursing officer shall certify to the state auditor amount or amounts to be thus transferred, the fund or funds from and to which the transfer is to be made, and the auditor shall thereupon make the transfer as directed in the certificate.

History: En. 68-2506 by Sec. 54, Ch. 323, L. 1973.



**68-2507. Payment of contributions by contracting employer.** Between the first and twentieth day of each month, each contracting employer shall remit to the public employees' retirement system all contributions required of the employer and its employees under this act on the basis of compensation paid during the previous month. These remittances shall be accompanied by such reports as are required by rules of the board.

History: En. 68-2507 by Sec. 55, Ch. 323, L. 1973.

**68-2508. Budget act superseded.** This act shall be valid and effective despite any provisions in the state budget act to the contrary.

History: En. 68-2508 by Sec. 56, Ch. 323, L. 1973.

**68-2509. Adjustment of errors in payments.** If more or less than the correct amount of contribution required by this act of a member, the state or a contracting employer is or has been paid, proper adjustment shall be made in connection with the subsequent payments, or such adjustments may be made by direct cash payments between the member, state or contracting employer in connection with whom the error was made, and the board. Adjustments to correct any other errors in payments to or by the board of administration may be made in the same manner.

History: En. 68-2509 by Sec. 57, Ch. 323, L. 1973.

**68-2510. Federally subsidized employees eligible—national guardsmen.**

(1) A person whose compensation is paid either fully or in part from federal funds, but who is not subject to the federal retirement system, is considered an employee and is entitled to all benefits and is required to make all employee contributions under the retirement system based upon the full salary received by such employee, including that portion of salary paid from federal funds.

(2) Each member of the Montana army and air national guard is considered an employee. Any such person who was an employee on July 1, 1961, or prior thereto and who has filed with the board an election not to become a member may at anytime, while he is an employee, file with the board an election to become a member and receive credit for prior service under the provisions of section 68-1608.

History: En. 68-2510 by Sec. 58, Ch. 323, L. 1973.

**68-2511. Transfer of credits to and from teachers' retirement system.**

(1) For the purpose of this section, "system" means the public employees' retirement system of Montana or the teachers' retirement system of the state of Montana.

(2) Upon transfer of a person from being an employee under one system to being an employee in the other, there shall be transferred service credits, both prior and membership, as have not been forfeited by withdrawal, unless the forfeited credits shall have been reinstated as provided by law. The amounts transferred shall be determined by the boards of the systems by mutual agreement and be certified by the system from

which the employee transfers. Any person who is concurrently employed by employers under both systems shall be entitled to establish credits or equities in each of the systems in accordance with and to the extent set forth in this act.

(3) Eligibility of any such person for a retirement allowance, death benefit or refund of contributions shall be governed by the provisions of the act creating the system to which the person last made contributions based upon the entire length of service for which he shall have been granted credit under both systems.

**History:** En. 68-2511 by Sec. 59, Ch. 323, L. 1973.

**68-2512. Reports by employers on status of employees.** The chief administrative officer of each employer shall furnish monthly reports to the board of administration showing any changes in status during the preceding month of the employer's members resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal or death. The chief administrative officer shall furnish such additional information concerning the members as the board may require in the administration of the retirement system, including such services of the employer's office and departments as the board may request in connection with claims by members for benefits under the system.

**History:** En. 68-2512 by Sec. 60, Ch. 323, L. 1973.

**68-2513. Cost-of-living increases.** (1) "Index" for purposes of this section shall mean, for any calendar year, that year's annual average consumer price index for urban wage earners and clerical workers, all items (1957-1959=100) compiled by the bureau of labor statistics, United States department of labor, or successor agency.

(2) Effective July 1, 1973, every service or disability retirement allowance then payable to a retired member or to his beneficiary shall be increased by a percentage equal to the lesser of one-half (1/2) of the percentage increase in the index for 1972 from the index for 1970 or the index for 1972 from the index for the calendar year preceding the effective date of retirement of the member.

(3) Effective July 1, 1973, every survivorship annuity then payable to a member's beneficiary shall be increased by a percentage equal to the lesser of one-half (1/2) of the percentage increase in the index for 1972 from the index for the calendar year 1970 or for the index for 1972 from the index for the calendar year preceding the date of death of the deceased member.

**History:** En. 68-2513 by Sec. 61, Ch. 323, L. 1973.

**68-2514. Retention of previously conferred benefits.** All benefits conferred upon members of the public employees' retirement system prior to the effective date of this act shall be retained for all person[s] who are members of the system on the effective date of this act.

**History:** En. 68-2514 by Sec. 62, Ch. 323, L. 1973.

**Compiler's Notes**

The compiler has inserted the bracketed letter "s."

**Repealing Clause**

Section 63 of Ch. 323, Laws 1973 read

"Sections 68-101, 68-102, 68-201, 68-202, 68-203, 68-301, 68-302, 68-303, 68-401 through 68-405, 68-501, 68-601, 68-602, 68-603, 68-701 through 68-710, 68-801, 68-802, 68-901, 68-902, 68-1001 through 68-1005, 68-1101, 68-1201 and 68-1301 through 68-1320, R. C. M. 1947, are repealed."

CHAPTER 26—SHERIFFS' RETIREMENT SYSTEM

Section

- 68-2601. A sheriffs' retirement system is established.
- 68-2602. Definitions.
- 68-2603. A sheriff's retirement board is created.
- 68-2604. Functions of the board.
- 68-2605. Sheriff's retirement account created—investment of funds—transfer of funds.
- 68-2606. Moneys paid to board and credited to retirement system account—accumulated deductions by sheriffs for prior service—contributions—investment earnings—any supplemental appropriations or revenues.
- 68-2607. Rules of membership—commencement of members' contributions.
- 68-2608. Members' contributions—deduction from pay.
- 68-2609. Counties contributions—administrative expense paid by the state of Montana.
- 68-2610. Eligibility for service retirement.
- 68-2611. Early retirement option.
- 68-2612. Service retirement allowance.
- 68-2613. Disability retirement allowance—disability determined by the board.
- 68-2614. Retirement allowance for member involuntarily discontinued from service.
- 68-2615. Voluntary resignation—discharged for incompetence, unlawful conduct—notification of the board—payment of accumulated deductions.
- 68-2616. Reinstatement after withdrawal of contributions—redeposit of contributions.
- 68-2617. Payments in case of death after retirement.
- 68-2618. Payments in case of death before retirement.
- 68-2619. Retirement allowances payable monthly.
- 68-2620. Retirement annuities exempt from state or municipal tax, sale, garnishment, attachment, or other process and shall be unassignable.
- 68-2621. Designation of beneficiary.
- 68-2622. Election to qualify military service for credit.
- 68-2623. False statements or falsification of records illegal—penalties.
- 68-2624. Board may revoke, refuse, or suspend member's annuity for conviction of felony—injury or death due to wrongful conduct.
- 68-2625. Payments are in addition to those provided by Workmen's Compensation Act.
- 68-2626. Retirement allowance—options.
- 68-2627. Rules of transfer of member's accumulated deductions to employer's account.
- 68-2628. Sheriffs ineligible for membership in public employees' retirement system.
- 68-2629. Severability clause.

**68-2601. A sheriffs' retirement system is established.** A retirement system is established for Montana sheriffs which shall be known as the "sheriffs' retirement system." It will be an actuarial reserve system for the payment of death, disability and retirement benefits to sheriffs and to the beneficiaries of the sheriffs to provide for themselves and their dependents in the case of disability or death, and upon retirement from active duty.

**History:** En. 68-2601 by Sec. 1, Ch. 178, L. 1974.

**Title of Act**

An act to establish a sheriffs' retirement system.

**68-2602. Definitions.** The words and phrases used in this act shall have the following meanings: (1) "Accumulated deductions"—the total amount deducted from the salary of a member either during a period of



membership service or as transferred from the public employees' retirement system with respect to a period of prior service and standing to his credit in the account together with the accrued interest.

(2) "Accumulated contributions"—the total amount deducted from the salary of a member either during a period of membership service or as transferred from the public employees' retirement system with respect to a period of prior service and standing to his credit in the account together with the accrued interest.

(3) "Beneficiary"—a person having an insurable interest in the member's life who is nominated in an acknowledged document by the member, which is filed with the board.

(4) "Retired sheriff"—a person receiving a retirement allowance under this act.

(5) "Board"—the sheriffs' retirement board.

(6) "Member"—any person who has accumulated deductions in the account to his credit.

(7) "Final salary"—the average annual salary received by a member before any deductions are made, and exclusive of maintenance, allowances and expenses, for any three (3) years of continuous service from which contributions were deducted. In the event that a member has not served three (3) years, the total salary earned, divided by the number of years served.

(8) "Actuarial equivalent"—a benefit computed using the mortality tables and interest rates adopted by the board, compounded annually.

(9) "Account"—the Montana sheriffs' retirement account administered by the sheriffs' retirement board.

(10) "Vested retirement"—a retirement not for cause and before retirement age.

(11) "Member's annuity"—payments for life derived from contributions made by the contributor while employed.

(12) "Retirement allowance"—the state annuity plus the member's annuity.

(13) "State annuity"—payments for life derived from contributions made by county contributions into the sheriffs' retirement account, together with any supplemental legislative appropriations to said account.

(14) "Creditable service"—the aggregate of all of a member's current and prior service.

(15) "Service credits"—the credit a member employed on a part-time basis shall receive which is a year of service for each fiscal year during which the member was employed the whole year and was engaged in his duties the full amount of time he was required by employment.

(16) "Membership service"—service for which an amount is deducted from the salary of a member and paid into the account.

(17) "Prior service"—that service for which credit was granted by the public employees' retirement system of the state of Montana.

(18) "Service"—employment as a sheriff.

(19) "Sheriff"—any elected or appointed county sheriff, undersheriff or regularly appointed and acting deputy sheriff.

History: En. 68-2602 by Sec. 2, Ch. 178,  
L. 1974.

**68-2603. A sheriff's retirement board is created.** The board shall consist of five (5) persons who shall be the same persons that comprise the board of administration of the public employees' retirement system.

History: En. 68-2603 by Sec. 3, Ch. 178,  
L. 1974.

**68-2604. Functions of the board.** The board may establish such rules and regulations as it deems necessary and is charged with the proper administration, operation and enforcement of this act. The board shall be the authority to prescribe the conditions under which persons may be admitted to and continue to receive benefits under the retirement system. It shall keep the data necessary for actuarial valuation purposes. It shall have biennial actuarial investigations made into the mortality and service experience of the members and to the beneficiaries of the account, and shall adopt one or more mortality tables.

History: En. 68-2604 by Sec. 4, Ch. 178,  
L. 1974.

**68-2605. Sheriff's retirement account created—investment of funds—transfer of funds.** (1) A sheriffs' retirement account is created within the public employees' retirement system. All moneys received under this act shall be credited to this account. The state treasurer shall be the custodian of the account and will respond to the exclusive administrative control of the board. Whenever there is over twenty-five thousand dollars (\$25,000), on deposit in the account that amount will be invested by the board of investments as part of the long-term investment fund and any of the account in an amount of twenty-five thousand dollars (\$25,000) or less shall be invested by the board of investments as part of the short-term investment fund when so directed by the sheriffs' retirement board.

(2) The board of administration shall, upon passage of this act, ascertain the amount appropriated to the account hereby created and the state treasurer shall transfer that amount to the account. The state examiner shall audit this transfer of funds.

History: En. 68-2605 by Sec. 5, Ch. 178,  
L. 1974.

**68-2606. Moneys paid to board and credited to retirement system account—accumulated deductions by sheriffs for prior service—contributions—investment earnings—any supplemental appropriations or revenues.** The following moneys shall be paid to the board, who shall credit such payments to the sheriffs' retirement system account:

(1) all accumulated deductions paid into the public employees' retirement system by any sheriff, during any period of prior service, as defined in this act; plus

(2) all contributions paid into the public employees' retirement system coincident with such accumulated deductions by the state of Montana or any county or city;

(3) all contributions by the various counties as required by this act;

(4) all contributions by sheriffs as defined in this act;

(5) all interest on and increase of the investments and moneys under this act;

(6) any supplemental appropriation or revenue from a source or sources approved by the legislature or money received directly from the federal government for funding of law enforcement retirement systems.

History: En. 68-2606 by Sec. 6, Ch. 178,  
L. 1974.

**68-2607. Rules of membership—commencement of members' contributions.** Every sheriff shall be required to become a member of the retirement system established by this act on July 1, 1974, unless he was previously a member of the public employees' retirement system, in which case, he may at his option become a member of the retirement system established by this act. Contributions by members under this act shall commence with the first payroll after July 1, 1974. All sheriffs who become members of the retirement system shall remain so long as actively employed in such capacity.

History: En. 68-2607 by Sec. 7, Ch. 178,  
L. 1974.

**68-2608. Members' contributions—deduction from pay.** Every member shall be required to contribute into the account seven per cent (7%) of his monthly salary which shall be deducted from his salary and deposited to his credit in the account. The contributor's retirement allowance shall be increased for any member who contributes after twenty-five (25) years of service, by an annuity calculated as twice the actuarial equivalent of the portion of the member's accumulated deductions arising from contributions after the completion of twenty-five (25) years of service.

History: En. 68-2608 by Sec. 8, Ch. 178,  
L. 1974.

**68-2609. Counties contributions—administrative expense paid by the state of Montana.** The various counties of Montana shall pay monthly seven and fifty-five one hundredths per cent (7.55%) of each sheriff's gross salary into the retirement account created by this act. The expense of the administration of this act, exclusive of the payment of retirement allowances and other benefits shall be paid by the state of Montana.

History: En. 68-2609 by Sec. 9, Ch. 178,  
L. 1974.

**68-2610. Eligibility for service retirement.** Any sheriff in service who has completed at least twenty-five (25) years of service, and who has reached the age of fifty-five (55) years, may retire on service retirement allowance upon written application to the board, not less than thirty (30) days nor more than ninety (90) days from desired date of retirement. The



application shall state the date he desires to be retired. Retirement shall be compulsory for any nonelected sheriff with exception of undersheriff at age sixty-five (65).

History: En. 68-2610 by Sec. 10, Ch. 178,  
L. 1974.

**68-2611. Early retirement option.** If a contributor has served twenty (20) years of creditable service as a sheriff and has reached the age of fifty-five (55) years, he is granted the option and privilege of retiring and, in such case, his retirement allowance shall be the actuarial equivalent of his retirement allowance as otherwise accrued, based upon payment commencing when he would have completed twenty-five (25) years of creditable service, had he not retired.

History: En. 68-2611 by Sec. 11, Ch. 178,  
L. 1974.

**68-2612. Service retirement allowance.** The amount of any member's service retirement allowance shall be two per cent (2%) of his final salary for each year of creditable service up to a maximum of fifty per cent (50%) of final salary.

History: En. 68-2612 by Sec. 12, Ch. 178,  
L. 1974.

**68-2613. Disability retirement allowance—disability determined by the board.** In the case of the permanent total disability of the member, regardless of the member's length of service, a disability retirement allowance shall be awarded to the member based on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement; but if such total permanent disability is a direct result of member's service as a sheriff in the line of duty then the member shall be awarded an allowance of one-half ( $\frac{1}{2}$ ) of his final salary. Total disability means a disability of permanent duration or of extended or uncertain duration. The determination shall be made by the board on the basis of competent medical advice.

History: En. 68-2613 by Sec. 13, Ch. 178,  
L. 1974.

**68-2614. Retirement allowance for member involuntarily discontinued from service.** Should a member be involuntarily discontinued from service after having completed ten (10) years of total service but before reaching retirement age, he shall, upon filing an application be paid in one of the following ways:

(1) The full amount of accumulated deductions standing to his credit; or

(2) a member's annuity of equivalent actuarial value to his accumulated deductions standing to his credit, plus the actuarial equivalent of a state annuity having a value equal to the present value of a state annuity then standing to his credit.

History: En. 68-2614 by Sec. 14, Ch. 178,  
L. 1974.

**68-2615. Voluntary resignation—discharged for incompetence, unlawful conduct—notification of the board—payment of accumulated deductions.**

(1) When a member resigns of his own volition or is discharged for cause other than incompetence, malfeasance in office or unlawful conduct before becoming entitled to the retirement allowance, he must:

(a) notify the board of his termination of eligibility and withdraw accumulated contributions standing to his credit at the time of his termination of eligibility, or

(b) notify the board of his termination of current eligibility but request that accumulated contributions standing to his credit be retained by the board for a period of time not to exceed one (1) year pending re-establishment of eligibility.

(2) A member discharged for incompetence, malfeasance in office or unlawful conduct prior to becoming entitled to a retirement allowance shall notify the board of the termination of eligibility. The member shall be paid the accumulated contributions standing to the member's credit at the time of termination of eligibility.

History: En. 68-2615 by Sec. 15, Ch. 178,  
L. 1974.

**68-2616. Reinstatement after withdrawal of contributions—redeposit of contributions.** Any member may deposit in the retirement fund, in one (1) sum or in not to exceed twelve (12) monthly or twenty-four (24) semi-monthly payments, an amount equal to that which was withdrawn at the last termination of membership plus an amount equal to the interest which would have been credited to the account had the member not withdrawn the contributions upon termination of membership, subject to minimum monthly or semimonthly payments as fixed by the board. If a member, upon re-entering the retirement system after a termination of membership, does not elect to make or does not make the redeposit, the member shall re-enter as a new member without credit for any service except the prior service credited before the termination. If a member does make such redeposit, his membership shall be continuous and unbroken by the last termination. Regardless of whether such redeposit is made, the documents held by the retirement system as executed by said member prior to termination of membership shall be held by the system for the same purposes as prior to said termination, and beneficiaries nominated shall remain unchanged.

History: En. 68-2616 by Sec. 16, Ch. 178,  
L. 1974.

**68-2617. Payments in case of death after retirement.** If a member dies before receiving in payments the amount of the accumulated deductions standing to the sheriff's credit at the time of retirement, the balance shall be paid to the beneficiary.

History: En. 68-2617 by Sec. 17, Ch. 178,  
L. 1974.

**68-2618. Payments in case of death before retirement.** If a member dies before retirement, his beneficiary shall be entitled to elect among those of the following options for which the member qualifies:

(1) A lump sum payment of the accumulated deductions standing to the member's credit at his death;

(2) If a member were not eligible to retire at the time of death, a retirement allowance commencing on the member's death which is the actuarial equivalent of a retirement in the amount of two per cent (2%) of the final salary for each year of service to a maximum of twenty-five (25) years;

(3) If the member were eligible to retire at the time of death, a retirement allowance commencing on the member's death in the amount of two per cent (2%) of the final salary for each year of service to a maximum of twenty-five (25) years;

(4) If the board shall find that the member died as a direct and proximate result of injuries received in the course of employment, a retirement allowance commencing on the member's death in the amount of fifty per cent (50%) of the final salary less the amount which is paid to any such beneficiary under the Workmen's Compensation Act of the state of Montana, during the period such compensation is paid or payable; provided that in no event shall a beneficiary be paid for a period longer than the time it would have taken the deceased member to reach the age of sixty-five (65) years or more than fifteen (15) years, whichever is greater.

History: En. 68-2618 by Sec. 18, Ch. 178,  
L. 1974.

**68-2619. Retirement allowances payable monthly.** The retirement allowances granted under the provisions of this act shall be paid in monthly annuities and shall not be increased, decreased, revoked, or repealed unless by an act of the legislative assembly of the state of Montana.

History: En. 68-2619 by Sec. 19, Ch. 178,  
L. 1974.

**68-2620. Retirement annuities exempt from state or municipal tax, sale, garnishment, attachment, or other process and shall be unassignable.** Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these, shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment, or any other process whatsoever and shall be unassignable.

History: En. 68-2620 by Sec. 20, Ch. 178,  
L. 1974.

**68-2621. Designation of beneficiary.** Every contributor shall have the authority to name a beneficiary by a written acknowledged designation properly filed with the board, and to change the beneficiary in like manner. Such designation and all changes must be filed with the board up until, but not after, the time of retirement.

History: En. 68-2621 by Sec. 21, Ch. 178,  
L. 1974.

**68-2622. Election to qualify military service for credit.** Any member now on active duty in, or hereafter inducted into the armed forces of the United States, shall have the option:



- (1) to continue payments into the account, or
- (2) to allow the board to make the payments during such military service, in which event the member shall repay the account the full amount of such payments upon return to the former status as a sheriff, and such repayments shall be made within two (2) years after return to such status; provided that a member's service in the armed forces of the United States shall be credited to and made a part of member's service allowance.

History: En. 68-2622 by Sec. 22, Ch. 178,  
L. 1974.

**68-2623. False statements or falsification of records illegal—penalties.**

(1) No person shall knowingly make any false statement or permit to be falsified any record or records of this retirement system in an attempt to defraud the system.

(2) Should any such change in records fraudulently made or any mistake in records inadvertently made result in any member or beneficiary receiving more or less than the person would have been entitled to had the records been correct, then, on the discovery of such error the board shall correct such error and shall adjust the payments which shall be made to the member or annuitant in such manner that the actuarial equivalent of the benefit to which the person was correctly entitled shall be paid.

(3) Any person violating any of the provisions of subsection (1) of this section shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine not exceeding one thousand dollars (\$1,000) or imprisonment in the county jail not exceeding one (1) year, or both.

History: En. 68-2623 by Sec. 23, Ch. 178,  
L. 1974.

**68-2624. Board may revoke, refuse, or suspend member's annuity for conviction of felony—injury or death due to wrongful conduct.** If any beneficiary is convicted of a felony, the board shall have the authority to revoke or suspend disbursement of the state annuity, in its discretion, for as long a time as it deems necessary. Where the illness or injury causing a member to retire, or where the death of a member, or a member to be retired, is directly and proximately caused by such member's immoral or intemperate conduct or gross negligence, the board shall have the authority to refuse, revoke or suspend disbursement of the state annuity for as long as, in its discretion, it deems necessary.

History: En. 68-2624 by Sec. 24, Ch. 178,  
L. 1974.

**68-2625. Payments are in addition to those provided by Workmen's Compensation Act.** All payments provided for in this act, except as provided in section 18 of this act [68-2618], are in addition to any other benefits now or hereafter provided for under the Workmen's Compensation Act of the state of Montana.

History: En. 68-2625 by Sec. 25, Ch. 178,  
L. 1974.

**68-2626. Retirement allowance—options.** Until the first payment on account of any retirement allowance is made and subject to the conditions

that, if the member dies after retirement and within thirty (30) days from the date upon which the member's election or changed election is received at the office of the retirement board, then said election is void and of no effect, and the death shall be considered as that of a member before retirement. A member or beneficiary may elect, revoke, or change a previous election prior to the approval of the previous election to receive the actuarial equivalent of the retirement allowance as of the date of retirement, in a lesser retirement allowance payable throughout life with one of the following options:

(1) Upon the member's death, a lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in the member's life, as the member nominates by written designation duly executed and filed with the board at the time of retirement.

(2) Upon the member's death, one-half ( $\frac{1}{2}$ ) of the lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in the member's life as the member nominated by written designation duly executed and filed with the board at the time of retirement.

(3) Such other benefit or benefits shall be paid either to the beneficiary or such other person or persons as the member nominates, as, together with such other retirement allowances are the actuarial equivalent of the member's retirement allowance, and shall be approved by the board.

History: En. 68-2626 by Sec. 26, Ch. 178,  
L. 1974.

**68-2627. Rules of transfer of member's accumulated deductions to employer's account.** The board may in its discretion transfer the accumulated deductions of a member to the employer's account in the sheriff's retirement account if the member's account has been dormant for a period of ten (10) years, provided that no right of the member shall be jeopardized by such transfer and the accumulated deduction shall be transferred to the member's name upon subsequent re-entry to membership.

History: En. 68-2627 by Sec. 27, Ch. 178,  
L. 1974.

**68-2628. Sheriffs ineligible for membership in public employees' retirement system.** After July 1, 1974, no sheriff shall be eligible to membership to the state public employees' retirement system and the provisions of said law shall not apply to sheriffs. No provision of this act is to be construed as to deny any sheriff any benefits accrued under provisions of the state public employees' retirement system prior to July 1, 1974.

History: En. 68-2628 by Sec. 28, Ch. 178,  
L. 1974.

**68-2629. Severability clause.** It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more

of the applications, the part remains in effect in all valid applications that are severable from the invalid applications.

History: En. 68-2629 by Sec. 29, Ch. 178,  
L. 1974.

#### CHAPTER 27—DEFERRED COMPENSATION PLAN

##### Section

- 68-2701. Deferred compensation programs permitted.
- 68-2702. Department of administration to co-ordinate.
- 68-2703. Payroll deductions—contracts for administrative services.
- 68-2704. "Employee" defined.
- 68-2705. Payments authorized—proper use of public assets.
- 68-2706. No other retirement programs affected.
- 68-2707. No liability to public entity.
- 68-2708. Legislative intent.
- 68-2709. Severability.

**68-2701. Deferred compensation programs permitted.** The state or any county, city, town, or other political subdivision may establish, after reaching agreement with any employee or the employee's representative if one has been designated or certified, a program for employees to defer any portion of that employee's compensation up to the maximum allowed by the Internal Revenue Code in a plan qualified for exemption under applicable sections of the Internal Revenue Code.

History: En. 68-2701 by Sec. 1, Ch. 264,  
L. 1974.

##### Title of Act

An act relating to the authority of public employees to enter into a deferred compensation plan.

**68-2702. Department of administration to co-ordinate.** The department of administration is hereby authorized to enter into such contractual agreements with employees or the employee's representative if one has been designated or certified, on behalf of the state to defer any portion of that employee's compensation through any qualified plan agreed upon by the employee or his representative. The department of administration may establish rules and regulations for the proper operation of these plans.

History: En. 68-2702 by Sec. 2, Ch. 264,  
L. 1974.

**68-2703. Payroll deductions—contracts for administrative services.** The co-ordination of the deferred compensation program shall be under the direction of the department of administration or his designee or the appropriate officer designated by the county, city, town, or other political subdivision. Payroll deductions shall be made, in each instance, by the appropriate payroll officer. The co-ordinator of the deferred compensation program may contract with a private corporation or institution for providing consolidated billing and other administrative services.

History: En. 68-2703 by Sec. 3, Ch. 264,  
L. 1974.

**68-2704. "Employee" defined.** For the purposes of this act, "employee" means any person whether appointed, elected, or under contract, providing



services for the state, county, city, town, or other political subdivision, for which compensation is paid.

History: En. 68-2704 by Sec. 4, Ch. 264,  
L. 1974.

**68-2705. Payments authorized—proper use of public assets.** Notwithstanding any other provision of law to the contrary, the department of administration or the appropriate officer of the county, city, town, or other political subdivision designated to co-ordinate the deferred compensation program is hereby authorized to make payments to qualified plans designated by this act. Such payments shall not be construed to be a prohibited use of the general assets of the state, county, city, town, or other political subdivision.

History: En. 68-2705 by Sec. 5, Ch. 264,  
L. 1974.

**68-2706. No other retirement programs affected.** The deferred compensation program established by this act shall exist and serve in addition to retirement, pension, or benefit systems, including plans qualifying under section 403(b) of the Internal Revenue Code of 1954, established by the state, county, city, town, or other political subdivision, and no deferral of income under the deferred compensation program shall affect a reduction of any retirement, pension, or other benefit provided by law. However, any sum deferred under the deferred compensation program shall not be subject to taxation until distribution is actually made to the employee. For purposes of this act any qualified private pension plans now in existence shall qualify under this act.

History: En. 68-2706 by Sec. 6, Ch. 264,  
L. 1974.

**68-2707. No liability to public entity.** There shall be no financial liability of the state, county, city, town or other political subdivision for any losses incurred by any plan established under this act.

History: En. 68-2707 by Sec. 7, Ch. 264,  
L. 1974.

**68-2708. Legislative intent.** It is the legislative intent of this act that all qualified deferred compensation plans shall be established only with companies, trusts or agents licensed to do business in the state of Montana.

History: En. 68-2708 by Sec. 8, Ch. 264,  
L. 1974.

**68-2709. Severability.** It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

History: En. 68-2709 by Sec. 9, Ch. 264,  
L. 1974.

## TITLE 69—PUBLIC HEALTH AND SAFETY

### Chapter

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## CHAPTER 14—CONSTRUCTION OF TEMPORARY FLOORS AND SCAFFOLDS

### 69-1404. (2675) Guarding of stairways, openings, etc.

#### Control of Premises

Construction company was not liable to building owner's employee for injuries incurred in fall through hole in floor as result of construction company's removing equipment, where construction company

had completed work over two months prior to fall and was therefore not in immediate or direct control or supervision of building. *Hannifin v. Cahill-Mooney Constr. Co.*, 159 M 413, 498 P 2d 1214.

## CHAPTER 15—BOILER INSPECTION—ENGINEERS LICENSE

## Section

- 69-1501. Advisory committee—functions—appointment and terms of members—traveling expenses—rules and regulations—state inspectors of boilers, appointment, term and compensation—special boiler inspectors.
- 69-1502. Qualifications of boiler inspectors.
- 69-1503. Inspection of boilers—boiler installations.
- 69-1504. Inspection of boilers—further requirements in making inspection.
- 69-1505. Inspection of boilers—material to be used.
- 69-1507. Duty of owner to permit inspection—board action—costs and expenses.
- 65-1508. Licenses required—penalty for operating without license.
- 69-1509. Classification and licensing of engineers.
- 69-1510. Complaints and revocation of license.
- 69-1511. Certificate of inspection—wrongfully issuing certificate of inspection or licenses as misdemeanor.
- 69-1512. Fees for inspection or examination.
- 69-1513. Review of license rejection.
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- 69-1515. Boilers exempted from provisions—duty of owner of traction engine—notice of purchase of boiler.
- 69-1516. Certificates must be renewed yearly—failure to renew.
- 69-1517. Operation of boiler or steam engine without license.

**69-1501. (2712) Advisory committee—functions—appointment and terms of members—traveling expenses—rules and regulations—state inspectors of boilers, appointment, term and compensation—special boiler inspectors.** (1) There is hereby created to advise the industrial accident board an advisory committee which shall hereafter be referred to as the committee, consisting of three (3) members who shall be appointed by the governor, one for two (2) years, one for three (3) years and one for four (4) years. At the expiration of their respective terms or when vacancies occur they or their successors identified with the same interest respectively shall be appointed by the governor for terms of four (4) years each. Of these appointed members one (1) shall be a Montana first class steam licensed operating engineer of boilers employed in that capacity at the time of his appointment, one (1) shall be commissioned by the national board of boilers and pressure vessels inspectors and shall represent the boiler insurance companies licensed to do business in the state, and one (1) shall be a Montana registered professional mechanical engineer. The committee shall elect one (1) of its members as chairman and shall meet whenever required.

The members of the committee shall serve without salary but shall receive actual travel expenses in the same manner as other state officers.

The committee shall act in a technical advisory capacity to the industrial accident board and shall formulate definitions, rules and regulations for the safe construction, installation, operation, inspection and repair of equipment covered by this act. The definitions, rules and regulations so formulated shall follow generally accepted nationwide engineering standards as published by the American society of mechanical engineers.

(2) Appointment, term and compensation of boiler inspectors. The industrial accident board shall appoint state inspectors of boilers and shall prescribe their duties, term of office and fix their compensation.

In addition to the state boiler inspectors the industrial accident board shall issue to the inspectors of boiler insurance companies authorized to



do business in the state, commissions, certificates or other recognition as special boiler inspectors and shall accept the inspection reports of such special inspectors as equivalent to those of the state inspectors, provided that each such special inspector shall hold a certificate as boiler inspector issued by the national board of boiler and pressure vessels inspectors. Such special inspectors shall receive no salary or expenses from the state nor shall the state collect inspection fees for inspections made by such special inspectors.

**History:** En. Sec. 550, Pol. C. 1895; re-en. Sec. 1639, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1913; amd. Sec. 1, Ch. 12, L. 1921; re-en. Sec. 2712, R. C. M. 1921; amd. Sec. 1, Ch. 77, L. 1967; amd. Sec. 1, Ch. 225, L. 1971.

#### Amendments

The 1971 amendment substituted "a Montana first class steam licensed operating engineer of boilers employed in that capacity at the time of his appointment" for "a practical steam operating engineer of boilers" in the third sentence of the first paragraph of subsection (1); inserted "shall be commissioned by the national board of boilers and pressure vessels inspectors and" in the third sentence of the first paragraph of subsection (1); substituted "a Montana registered pro-

fessional mechanical engineer" for "a graduate mechanical engineer" at the end of the third section of the first paragraph of subsection (1); substituted "whenever required" for "twice each year" at the end of the first paragraph of subsection (1); inserted "operation" in the first sentence of the third paragraph of subsection (1); deleted "not to exceed four (4)" before "state inspectors" in the first paragraph of subsection (2); inserted "duties" in the first paragraph of subsection (2); and made minor changes in phraseology.

#### Cross-References

Committee abolished and functions transferred, sec. 82A-1005(2).

Industrial accident board abolished and functions transferred, sec. 82A-1005 (1).

**69-1502. (2713) Qualifications of boiler inspectors.** No person is eligible to hold the office of inspector of boilers and steam engines who has not had at least ten years of actual experience in the operation of steam engines, steam boilers, and steam machinery, and who has not held for at least three (3) years immediately preceding his appointment a first-class stationary engineer's license of the state of Montana, or who is directly or indirectly interested in the manufacture or sale of boilers or steam machinery, or any patented article required to be sold relating thereto.

**History:** En. Sec. 2, p. 102, L. 1889; amd. Sec. 551, Pol. C. 1895; re-en. Sec. 1640, Rev. C. 1907; amd. Sec. 2, Ch. 30, L. 1913; re-en. Sec. 2713, R. C. M. 1921; amd. Sec. 2, Ch. 225, L. 1971.

#### Amendments

The 1971 amendment reduced the stationary engineer's license requirement from five years to three years.

**69-1503. (2714) Inspection of boilers—boiler installations.** (1) The inspector of boilers must inspect all boilers and steam generators before the same are used, and all persons who bring into this state, for operation in this state, any boiler or boilers must notify the board stating the number and kind of boilers, and where they are to be located and operated in this state, and must secure from the board a certificate of inspection before said boilers are placed in operation, except in the case of new boilers, which must be inspected within ninety (90) days after they are put in use, and all boilers must be inspected at least once in every year, except boilers exempt under provisions of section 69-1515. Upon written application, longer inspection intervals may be authorized

by the board. Any owner, operator or user who opens a boiler or boilers between inspections for repair or other reasons must notify the board of such action and such boiler or boilers shall at the discretion of the board be inspected by the state or special boiler inspector before the boiler or boilers may be placed back in operation. Any person failing to give notice to the board as herein provided, or who operates such boilers without a certificate from the board, shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense, or by imprisonment in the county jail for not less than thirty (30) nor more than ninety (90) days, or by both such fine and imprisonment.

(2) When necessary, the boiler inspector shall subject boilers, except those exempted by 69-1515, to hydrostatic pressure, which hydrostatic pressure shall not exceed one hundred fifty per cent (150%) of the steam pressure allowed on the boilers, providing there are no such leaks on such boilers which prevent the inspector from applying such hydrostatic pressure. And the inspector must satisfy himself by a thorough interior and exterior examination that the boilers are well-made and of good and suitable material; that the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat, are of the proper dimensions and free from obstructions; that the flues are circular in shape; that the fire line of the furnace is at least two (2) inches below prescribed minimum water line of the boilers; that the arrangements for delivering the feed water are such that the boilers cannot be injured thereby, and that such boilers and the steam connections may be safely employed without danger to life.

(3). \* \* \* [Same as parent volume.]

History: Ap. p. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R. C. M. 1921; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971.

#### Amendments

The 1971 amendment substituted "all boilers" for "all steam boilers" near the beginning of subsection (1); inserted "for operation in this state" in the first sentence of subsection (1); substituted

"board" for "boiler inspector" in four places in subsection (1); deleted "where they had heretofore been located" following "number and kind of boilers" in the first sentence of subsection (1); inserted new second and third sentences in subsection (1); inserted "When necessary" at the beginning of subsection (2); increased the hydrostatic pressure testing requirement specified in the first sentence of subsection (2) from 133⅓% to 150%; and made minor changes in phraseology.

**69-1504. (2715) Inspection of boilers—further requirements in making inspection.** (1) The inspector must also satisfy himself that the safety valves are of suitable relieving capacity ratings, sufficient in number and area, and properly arranged, and that the safety-valves are properly adjusted so as to allow no greater pressure in the boilers than the amount prescribed by the inspection certificate; that there are a sufficient number of gauge cocks properly inserted to indicate the amount of water, and suitable gauges that will correctly record the pressure of steam; and adequate and certain provisions for an ample supply of water to feed the boilers at all times, and that suitable means for blowing out are provided, so as to thoroughly remove mud and sediment from all parts of the boilers



when they are under pressure of steam, and any renter, user, or owner of a boiler, or any person or persons who tamper with the safety valve to allow the boiler to carry greater pressure than is allowed by the inspection certificate, shall be deemed guilty of a misdemeanor.

(2) Where a boiler is constructed with lap horizontal seams on boiler, dome, or drum, a factor of four and one-half shall be used in determining the safe working pressure allowed on such boiler. But where the boilers are constructed with butt-strap horizontal seams, a factor of four may be used in determining such safe working pressure. If boiler rests on side wall on lugs, or is hung by I-beams, or is in any way set up so that the weight of the boiler is pulling against the horizontal seam of rivets, a factor of five must be used to determine the safe working pressure allowed on boiler. Where the horizontal lap seams of boiler are exposed to the fire, a factor of five must be used to determine the safe working pressure to be allowed on such boiler. On stay bolts, if new, seven thousand five hundred pounds pressure per square inch shall be allowed. If such stay bolts are corroded or defective, the inspector must determine the pressure to be allowed on same. On braces made of solid material, eight thousand pounds pressure per square inch shall be allowed. On welded braces or braces with only one crow-foot, six thousand pounds pressure per square inch shall be allowed. No cast iron shall be used in the construction or reinforcements of any boiler where the pressure allowed on said boiler is more than one hundred pounds per square inch.

**History:** Ap. p. Sec. 555, Pol. C. 1895; re-en. Sec. 1644, Rev. C. 1907; amd. Sec. 6, Ch. 30, L. 1913; re-en. Sec. 2715, R. C. M. 1921; amd. Sec. 4, Ch. 225, L. 1971.

#### Amendments

The 1971 amendment substituted "suitable relieving capacity ratings" for "suitable dimension" near the beginning of subsection (1); substituted "safety valves

are properly adjusted" for "safety-valve weights are properly adjusted" in subsection (1); deleted a second paragraph of subsection (1), for text of which see parent volume; and deleted from subsection (2) a third sentence reading "But in any case the inspector may use a higher factor if the conditions are such as to warrant it."

**69-1505. (2716) Inspection of boilers—material to be used.** No boiler or steam pipe, nor any of the connections thereto, shall be approved which is made in whole or in part of bad material, or is unsafe from any cause. Nothing herein shall be construed to prevent the use of any boiler or steam generator which may not be constructed of riveted iron or steel plates, when the inspector has satisfactory evidence that such boiler or steam generator is equal in strength to and as safe from explosion as boilers of the best quality, constructed of iron or steel plates.

**History:** En. Sec. 556, Pol. C. 1895; re-en. Sec. 1645, Rev. C. 1907; re-en. Sec. 2716, R. C. M. 1921; amd. Sec. 5, Ch. 225, L. 1971.

#### Amendments

The 1971 amendment substituted "shall be approved" for "must be approved" in the first sentence.

**69-1507. (2718) Duty of owner to permit inspection—board action—costs and expenses.** It is the duty of the owners, engineers, or managers of steam or water boilers to allow the inspector free access to the same. In case the owner, operators, or manager of any boiler is notified



by the inspector to have said boiler ready for inspection on a certain day, and fails to have such boiler ready for inspection at such time, the inspector shall notify the board to gain access to said boiler. Any person failing to immediately comply with board directed access to said boiler shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than two months nor more than six months, or by both such fine and imprisonment. The owner, engineer or manager of any boiler who has refused access resulting in a board order must pay all transportation and hotel expenses of the inspector who makes the inspection directed by such order, in addition to the inspection fee provided by law. It shall be the duty of the engineer operating any boiler or boilers to assist the inspectors in their examination of the same, and point out any defects known to him in the boilers or machinery under his charge. Any engineer not complying with this section shall have his license revoked or suspended.

**History:** En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R. C. M. 1921; amd. Sec. 6, Ch. 225, L. 1971.

#### Amendments

The 1971 amendment inserted "engineers" and the reference to water boilers in the first sentence; inserted "operators" in the second sentence; substituted "shall notify the board to gain access to said boiler" at the end of the second sentence for "shall at once seal up the firebox in such boiler, and such seal must not be removed from the firedoor without a written order from the inspector"; substituted

"failing to immediately comply with board directed access to said boiler" in the third sentence for "tampering with or removing said seal"; substituted "The owner, engineer or manager of any boiler who has refused access resulting in a board order must pay" at the beginning of the fourth sentence for "If the owner or manager of any boiler that has been so sealed desires to have the same inspected before the next regular visit of the inspector to the district where said boiler is situated, he must pay"; inserted "directed by such order" near the end of the fourth sentence; and made minor changes in phraseology.

**69-1508. (2719) Licenses required—penalty for operating without license.** No person shall be granted a license to operate steam or water boilers and steam machinery under the provisions of this article, who has not met the qualifications for licensing and found to be competent by examination to perform the duties of an engineer, and received a license so to act. Any person who operates any boiler or steam engine without first obtaining a license is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment.

**History:** En. Sec. 559, Pol. C. 1895; re-en. Sec. 1648, Rev. C. 1907; amd. Sec. 8, Ch. 30, L. 1913; re-en. Sec. 2719, R. C. M. 1921; amd. Sec. 7, Ch. 225, L. 1971.

#### Amendments

The 1971 amendment substituted "steam or water boilers and steam machinery" for "steam boilers or steam machinery" near the beginning of the first sentence; sub-

stituted "met the qualifications for licensing and found to be competent by examination" for "been examined by the inspector and found competent" in the first sentence; deleted "written or printed" before "license" near the end of the first sentence; deleted "steam" before "boiler" near the beginning of the second sentence; and made minor changes in phraseology.

**69-1509. (2720) Classification and licensing of engineers.** (1) Engineers entrusted with the operation, care and management of steam or water boilers and steam machinery as specified in the preceding section must be divided into four classes, namely, first-class engineers, second-class engineers, third-class engineers, and low-pressure engineers.

(2) Licenses for the operation of steam or water boilers and steam machinery shall be divided into four classifications in accordance with the following:

(a) First-class engineers shall be licensed to operate all classes, pressures, and temperatures of steam and water boilers and steam driven machinery with the exception of traction and hoisting engines.

(b) Second-class engineers shall be licensed to operate steam boilers operating not in excess of two hundred fifty (250) pounds per square inch gauge saturated steam pressure or water boilers operating not in excess of three hundred seventy-five (375) pounds per square inch gauge pressure and four hundred fifty degrees Fahrenheit (450°F) temperature, and steam driven machinery not to exceed one hundred (100) horsepower per unit with the exception of traction and hoisting engines.

(c) Third-class engineers shall be licensed to operate steam boilers operating not in excess of one hundred (100) pounds per square inch gauge saturated steam pressure or water boilers operating not in excess of one hundred sixty (160) pounds per square inch gauge pressure and three hundred fifty degrees Fahrenheit (350°F) temperature.

(d) Low-pressure engineers shall be licensed to operate steam boilers operating not in excess of fifteen (15) pounds per square inch gauge pressure or water boilers operating not in excess of fifty (50) pounds per square inch gauge pressure and two hundred fifty degrees Fahrenheit (250°F) temperature.

(3) Each applicant for an engineer's license shall meet the following minimum requirements for the class of engineer's license for which application is being made. Each applicant for any classification must be physically and mentally capable of performing the required duties for the class of engineer's license for which application is being made.

(a) Applicants for low-pressure engineer's license shall have no less than three (3) months' full-time experience in the actual operation of a boiler in this classification and successfully pass a written examination prescribed by the board and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers in this classification shall be granted a low-pressure engineer's license.

(b) Applicants for third-class engineer's license shall have no less than six (6) months' full-time experience in the actual operation of a boiler in this classification, under an engineer holding a valid third-class or higher license, and successfully pass a written examination prescribed by the board and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers in this classification shall be granted a third-class engineer's license.

(c) Applicants for second-class engineer's license shall have:

(1) No less than two (2) years' full-time experience in the actual operation of a boiler and steam driven machinery in this classification,



under an engineer holding a valid second-class or first-class license, and successfully pass a written examination prescribed by the board and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a second-class engineer's license; or

(2) Hold a valid third-class engineer's license and have no less than one (1) year's full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid second-class or first-class license, and successfully pass a written examination prescribed by the board and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a second-class engineer's license.

(d) Applicants for first-class engineer's license shall have:

(1) No less than three (3) years' full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid first-class license, and successfully pass a written examination prescribed by the board and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification, shall be granted a first-class engineer's license; or

(2) Hold a valid second-class engineer's license and have no less than one (1) year's full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid first-class license, and successfully pass a written examination prescribed by the board and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a first-class engineer's license; or

(3) Hold a valid third-class engineer's license and have no less than two (2) year's full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid first-class license, and successfully pass a written examination prescribed by the board and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a first-class engineer's license.

(e) Allowable exceptions or variances to the foregoing minimum requirements are as follows:

(1) Applicants for engineer's license in any classification holding a valid license in that classification from another state with licensing requirements equal to or exceeding the foregoing minimum requirements for the state of Montana and successfully pass a written examination prescribed by the board and is found to be competent to operate a boiler or boilers and steam driven machinery in that classification shall be granted a license in that classification.

(2) Operating experience in a classification satisfactory to the board, accumulated in United States military services or the merchant marine



service may be accepted in lieu of the operating experience required for licensing of engineers in each of the foregoing classifications.

(3) Applicants with training in the actual operation of steam or water boilers and steam machinery who have been certified as having satisfactorily completed a prescribed training course from a recognized vocational-technical training school or center or other board approved institution or training program in the classification for which he is applying may at the discretion of the board be credited with a maximum of six (6) months' experience toward first, second, or third-class engineer's license.

(4) None of the licenses in this section above named shall entitle the holder thereof to operate a traction engine, but all persons who are entrusted with the care and management of traction engines, or boilers on wheels, are required to pass an examination as to their competency to operate such class of machinery and to procure a license to be known as a traction license. Such traction license shall not entitle the holder thereof to operate any other class of steam machinery specified in the preceding section. Applicants for a traction engineer's license shall have no less than six (6) months' full-time experience in the operation of steam traction engines and successfully pass a written examination prescribed by the board and has passed his eighteenth (18th) birthday and is found to be competent to operate a traction engine shall be granted a traction engineer's license. The board at its discretion may waive the experience requirement for operators of traction engines which are maintained and operated as a hobby for the restoration and show purposes of antique equipment.

**History:** En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R. C. M. 1921; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973.

#### Amendments

The 1971 amendment inserted "operation" near the beginning of subsection (1); substituted "steam or water boilers and steam machinery" for "steam machinery" in the first sentence of sub-

section (1); completely rewrote subsections (2) and (3), including therein the former second sentence of subsection (1); and completely rewrote the third and fourth sentences of subsection (4). For prior text, see parent volume.

The 1973 amendment reduced the ages specified in subdivisions (3) (c) (1) and (3) (c) (2) from twenty to eighteen years, and in subdivisions (3) (d) (1), (3) (d) (2) and (3) (d) (3) from twenty-one to eighteen years; and made minor changes in style.

**69-1510. (2721) Complaints and revocation of license.** Whenever complaint is made against an engineer holding a license that he through negligence, want of skill, or inattention to duty, permitted his boiler(s) to burn or otherwise become in bad condition, or that he has been found intoxicated or under the influence of drugs while on duty, it is the duty of the board to make a thorough investigation of the charge, and upon satisfactory proof of such charge to revoke the license of said engineer.

**History:** En. Sec. 561, Pol. C. 1895; re-en. Sec. 1650, Rev. C. 1907; amd. Sec. 10, Ch. 30, L. 1913; re-en. Sec. 2721, R. C. M. 1921; amd. Sec. 9, Ch. 225, L. 1971.

#### Amendments

The 1971 amendment inserted "or under the influence of drugs"; substituted "board" for "inspector or assistant inspector"; and made minor changes in phraseology.

**69-1511. (2722) Certificate of inspection—wrongfully issuing certificate of inspection or licenses as misdemeanor.** In making an inspection of the boilers and machinery herein provided for, the inspectors may act jointly or separately, but the inspector or assistant inspector making such inspection must in all cases certify the same under the seal of the inspector of boilers and safety. Any inspector or assistant inspector who willfully certifies regarding any boilers or their attachments, or grants a license to any person to act as engineer contrary to the provisions of this article, is guilty of a misdemeanor. All certificates of inspection, operating certificates and engineer's licenses must be displayed in a conspicuous place in the boiler room.

**History:** En. Sec. 562, Pol. C. 1895; re-en. Sec. 1651, Rev. C. 1907; amd. Sec. 11, Ch. 30, L. 1913; re-en. Sec. 2722, R. C. M. 1921; amd. Sec. 10, Ch. 225, L. 1971; amd. Sec. 20, Ch. 513, L. 1973.

#### Amendments

The 1971 amendment substituted "inspector of boilers and safety" for "boiler inspector's office" at the end of the first

sentence; deleted "steam" before "boilers" in the second sentence; and added the third sentence.

The 1973 amendment deleted "and feloniously" following "willfully" near the beginning of the second sentence; and substituted "is guilty of a misdemeanor" for "is punishable under the provisions of section 94-35-214" at the end of the second sentence.

**69-1512. (2733) Fees for inspection or examination.** (1) All fees for inspection are to be paid to the industrial accident board in accordance with the following schedule based on safety valve setting:

(a) to (g). \* \* \* [Same as parent volume.]

In case of the failure of the owner, manager or person in charge of any boiler to pay such fee to the industrial accident board, the board shall initiate the necessary legal action to collect said fee. Failure of any person to immediately abide with results of such board action shall be deemed guilty of a misdemeanor and punished as provided by section 69-1507.

(2) Whenever, upon request of the owner or operator of any boiler it is necessary for the inspector to make a special trip for the inspection of the boiler, the mileage and per diem allowed by law, in addition to the fees herein prescribed, shall be charged and collected by the industrial accident board.

(3) Applicants for engineer's license shall pay fees according to the class of license for which application is made, as specified in the following schedule:

(a) to (g). \* \* \* [Same as parent volume.]

(4) Each application shall be accompanied by a payment equal to fifty per cent (50%) of the license fee for which application is being made; said payment shall be forfeited in the event the applicant fails to appear for the examination at the scheduled time or fails to pass the examination.

In case of the failure of any applicant to successfully pass an examination, forty-five (45) days must elapse before he can again be examined for license.

**History:** En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R. C. M. 1921; amd.

Sec. 1, Ch. 54, L. 1959; amd. Sec. 3, Ch. 77, L. 1967; amd. Sec. 1, Ch. 255, L. 1969; amd. Sec. 11, Ch. 225, L. 1971.



# Amendments

The 1971 amendment changed the preliminary paragraph of subsection (1) to provide for payment to the industrial accident board instead of the state inspector of boilers; inserted "based on safety valve setting" at the end of the preliminary paragraph of subsection (1); substituted "the board shall initiate the necessary legal action to collect said fee" for "said inspector is authorized to seal the firebox of said boiler, and said seal shall not be removed until said fee is paid and the written order of the inspector authorizing its removal is received by said owner or manager" at the end of the first sentence of the final paragraph of subsection (1); substituted "Failure of any person to immediately abide with results of such board action" for "Any person who tampers

with or removes such seal without such written order" at the beginning of the second sentence of the final paragraph of subsection (1); substituted "by the industrial accident board" for "by the inspector at the time such special inspection is made" at the end of subsection (2); inserted a new paragraph now appearing as the first paragraph of subsection (4); reduced the waiting time required by the second paragraph of subsection (4) from 90 to 45 days; deleted from the end of the section sentences reading "But the inspector may grant to the applicant a lower grade of license than that applied for upon such examination. All certificates of inspection and engineers' licenses must be displayed in a conspicuous place in the engine room"; and made minor changes in phraseology.

**69-1513. (2724) Review of license rejection.** If any person who has applied for a license under the provisions of this article, and has been rejected, feels aggrieved, he may at any time after the lapse of ten days, and within forty-five (45) days after the date of his rejection, in writing set forth the causes of his grievance and request a board review. Such request must be addressed to the board and shall be signed by the rejected applicant. Within two days after receiving such request, it is the duty of the board to notify the applicant in writing that on a certain day, which shall not be less than five nor more than thirty (30) days after the date the board receives said written request, the committee shall review and evaluate the application. The applicant may appear in person at said review if he so desires. At least two days before the day set for the review the applicant may designate in writing to the board the name of an engineer holding a valid license of equal or higher grade with the one applied for, and such engineer may present himself in behalf of the applicant upon the day and at the hour fixed for the review.

**History:** En. Sec. 564, Pol. C. 1895; re-en. Sec. 1653, Rev. C. 1907; re-en. Sec. 2724, R. C. M. 1921; amd. Sec. 12, Ch. 225, L. 1971.

# Amendments

The 1971 amendment rewrote this section so as to provide for board review rather than re-examination by the inspector, and made numerous changes. For prior text, see parent volume.

**69-1514. (2725) Board decision.** After said review is completed, and if a majority of the committee decides that such applicant is entitled to the license he has applied for, the board shall without delay issue a license accordingly, but if a majority of the committee rejects the applicant, it is a final rejection, and he must not be granted another examination for the space of forty-five (45) days after such last rejection, when he may again apply as provided by section 69-1512.

**History:** En. Sec. 565, Pol. C. 1895; re-en. Sec. 1654, Rev. C. 1907; re-en. Sec. 2725, R. C. M. 1921; amd. Sec. 13, Ch. 225, L. 1971.

# Amendments

The 1971 amendment completely rewrote this section. For prior text, see parent volume.

**69-1515. (2726) Boilers exempted from provisions—duty of owner of traction engine—notice of purchase of boiler.** (1) This act shall not



apply to boilers under federal control. The provisions of this act requiring inspections, inspection fees and certificates shall not apply to steam heating boilers operated at not over fifteen (15) pounds per square inch gauge pressure in private residences or apartments of six (6) or less families or to hot water heating or supply boilers operated at not over fifty (50) pounds per square inch gauge pressure and temperatures not over two hundred fifty degrees Fahrenheit (250°F) when in private residences or apartments of six (6) or less families. Locomotives, commonly known as dinkey engines, used in operating logging or mining railroads, or any similar work where such locomotives are owned, leased or operated by any individual, company, or corporation and are used in the business of such individual, company, or corporation, and not for general commercial purposes, shall be classed as traction engines and be subject to inspection as are other traction engines, and the persons operating or firing such dinkey locomotives shall be required to hold traction licenses. No persons operating any of the engines or boilers hereinbefore exempted from the operation of this article shall be required to procure license from the board.

(2) Any person purchasing any boiler whether traction or stationary shall be entitled to receive from the seller the certificates of inspection issued on such boiler and any person purchasing any boiler, whether traction or stationary, not exempted by the provisions of this section, shall, within ten (10) days after such purchase, report the fact of such purchase to the board and shall notify the board as to where said boiler will be installed and operated. Any person failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor. All other boilers and steam engines, except as herein exempted, come under the provisions of this article and persons operating same are required to hold the proper grade of license.

**History:** En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R. C. M. 1921; amd. Sec. 1, Ch. 140, L. 1923; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971.

#### Amendments

The 1971 amendment reduced the maximum pressure specified by the second sentence of subsection (1) with temperatures up to 250 degrees from 160 to 50 pounds per square inch; deleted from subsection (1) a third sentence reading "Locomotives used on railroads conducting a general business in hauling passengers and freight do not come under the pro-

visions of this article"; deleted from the beginning of subsection (2) two sentences reading "It shall be the duty of the owner and user of any traction engine or boiler on wheels to notify the inspector of the location of such boiler on or before the first day of June of each year. Any owner or user of such traction engine or boiler on wheels who shall fail to notify the inspector as herein provided shall be deemed guilty of a misdemeanor"; deleted "steam" before "boiler" in three places in subsection (2); substituted references to the board for references to the boiler inspector in the first sentence of subsection (2); and made minor changes in phraseology.

**69-1516. (2727) Certificates must be renewed yearly—failure to renew.** All certificates of license to engineers of all classes shall be renewed yearly, except as herein provided. Any engineer failing to renew his license as herein provided, or within at least thirty days after the date of expiration shall be assessed the fee for the original license of the same grade, before the license will be reissued. Any engineer failing to

renew his license within twelve months of the date of expiration, must reapply for an engineer's license as required by the provisions of section 69-1509; provided, however, that any engineer whose license expired while such engineer was in the military or naval service of the United States shall have ninety (90) days from the time such engineer is discharged from such military or naval service within which to renew his license at the renewal fee.

**History:** En. Sec. 6, Ch. 32, L. 1905; re-en. Sec. 1656, Rev. C. 1907; amd. Sec. 14, Ch. 30, L. 1913; amd. Sec. 1, Ch. 54, L. 1919; re-en. Sec. 2727, R. C. M. 1921; amd. Sec. 2, Ch. 54, L. 1959; amd. Sec. 167, Ch. 147, L. 1963; amd. Sec. 15, Ch. 225, L. 1971.

#### Amendments

The 1971 amendment deleted a second

sentence reading "The fee for renewal is two dollars (\$2.00) in all cases"; inserted that part of the third sentence preceding the proviso; increased the time allowed for renewal after discharge from military service from sixty to ninety days; deleted a second paragraph, for text of which see parent volume; and made minor changes in phraseology.

### 69-1517. (2728) Operation of boiler or steam engine without license.

It is unlawful for any person in this state to operate a stationary boiler or steam engine, or any boiler or steam engine other than engines and boilers exempted by the provisions of section 69-1515, without a license granted under the provisions of this article. The owner, renter, or user of any engine or boiler is equally liable for the violation of this section. But in case of accident, sickness, or any unforeseen prevention of the licensed engineer employed by any owner, renter, or user of an engine or boiler, the owner, renter, or user may, for fifteen days employ any person of the age of eighteen years or over whom he may consider competent to run the engine or boiler, although such person so employed may not be the holder of an engineer's license, he shall have reasonable qualifications acceptable to the board. The person so employing the unlicensed engineer shall immediately notify the board. But no owner, renter, or user of boilers or steam machinery shall be allowed to so employ unlicensed engineers for more than fifteen days in any one calendar year. And it shall be unlawful, except as stated in this section, for any person, firm, or corporation to employ any person not duly licensed as an engineer, within the meaning of this act, to run or operate any of the boilers or engines subject to the provisions of this act.

**History:** En. Sec. 568, Pol. C. 1895; re-en. Sec. 1657, Rev. C. 1907; amd. Sec. 15, Ch. 30, L. 1913; re-en. Sec. 2728, R. C. M. 1921; amd. Sec. 16, Ch. 225, L. 1971.

#### Amendments

The 1971 amendment deleted "railroad locomotives or other" before "engines and boilers exempted" in the first sentence; deleted "steam" before "engine or boiler" in two places; deleted "refusal to work" after "sickness" in the third sentence; de-

leted "operated in remote districts, which would retard the work to be performed" after "engine or boiler" in the first part of the third sentence; added "he shall have reasonable qualifications acceptable to the board" at the end of the third sentence; substituted "board" for "inspector or assistant inspector" at the end of the fourth sentence; inserted "boilers or" before "steam machinery" in the fifth sentence; and made minor changes in phraseology.

### 69-1518. (2729) Repealed.

#### Repeal

Section 69-1518 (Sec. 7, Ch. 32, L. 1905; Sec. 16, Ch. 30, L. 1913), relating to sale

of secondhand boilers, was repealed by Sec. 24, Ch. 225, Laws 1971.



## CHAPTER 16—HOISTING ENGINES—LICENSE OF OPERATORS

## Section

- 69-1601. Operators of hoisting engines must procure licenses.  
 69-1602. Application and fee for license—renewal and revocation of license.  
 69-1603. Scope of license—exemptions.  
 69-1604. First and second-class licenses—qualifications of applicant.  
 69-1607. Penalty for operating machinery without license.

**69-1601. (2730) Operators of hoisting engines must procure licenses.**

(1) It shall be unlawful for any person to operate any hoisting engine driven by any power when used in lowering or hoisting personnel in industrial operations or on construction projects, or any air compressor operated by any power without first obtaining a license therefor from the board as herein provided. Except that in emergencies the provisions of section 69-1517 relating to the employment of unlicensed engineers shall apply to the operation of the engines and machinery named herein.

(2) First-class hoisting engineers shall be licensed to operate hoisting engines driven by any power and unlimited horsepower used in the lowering or hoisting of personnel in industrial operations or on construction projects.

(3) Second-class hoisting engineers shall be licensed to operate hoisting engines driven by any power and not in excess of one hundred (100) brake horsepower used in the lowering or hoisting of personnel in industrial operations or on construction projects.

**History:** En. Sec. 1, Ch. 104, L. 1915; amd. Sec. 1, Ch. 31, L. 1919; re-en. Sec. 2730, R. C. M. 1921; amd. Sec. 17, Ch. 225, L. 1971.

pletely rewrote the first sentence of subsection (1), for previous text of which see parent volume; and added subsections (2) and (3).

**Amendments**

The 1971 amendment designated the former provision as subsection (1); com-

**Cross-References**

Industrial accident board abolished and functions transferred, sec. 82A-1005 (1).

**69-1602. (2731) Application and fee for license—renewal and revocation of license.** Application for such licenses shall be made to the board in the same manner, and the same fee shall be charged therefor as now required by law for obtaining a license to operate steam engines and boilers, and such license shall be given for a period of one year from the date of issuance thereof, and may be renewed in the same manner provided by law for the renewal of a license to operate steam engines or boilers; provided, that the board shall have the right to revoke any license issued under the provisions of this act for any of the reasons for which the board could revoke a license to operate steam engines and boilers.

**History:** En. Sec. 2, Ch. 104, L. 1915; re-en. Sec. 2731, R. C. M. 1921; amd. Sec. 18, Ch. 225, L. 1971.

**Amendments**

The 1971 amendment substituted references to the board for references to the state boiler inspector and made minor changes in phraseology.

**69-1603. (2732) Scope of license—exemptions.** (1) A license granted under the provisions of this act shall entitle the holder thereof to operate any of the machinery named in section 69-1601, and the license shall



specify on its face such machinery, but no license issued hereunder shall authorize or qualify the person to whom issued to operate a boiler or steam engine.

(2) The provisions of this act shall not apply to hoisting engines or elevators under federal control or to operating elevators in completed private or public buildings.

History: En. Sec. 3, Ch. 104, L. 1915; amd. Sec. 2, Ch. 31, L. 1919; re-en. Sec. 2732, R. C. M. 1921; amd. Sec. 19, Ch. 225, L. 1971.

former provisions as subsection (1); deleted former second and third sentences, for text of which see parent volume; added a new subsection (2); and made minor changes in phraseology.

#### Amendments

The 1971 amendment designated the

**69-1604. (2733) First and second-class licenses—qualifications of applicant.** (1) Each applicant for a hoisting engineer's license shall meet the following minimum requirements for the class of license for which application is being made. Each applicant for any classification must be physically and mentally capable of performing the required duties for the class of license for which application is being made.

(a) Applicants for second-class hoisting engineer's license shall have no less than two years' experience in the actual operation of hoisting equipment in this classification under an engineer holding a valid second-class or first-class license and successfully pass a written examination prescribed by the board and has passed his eighteenth (18th) birthday and is found to be competent to operate hoisting equipment in this classification shall be granted a second-class hoisting engineer's license.

(b) Applicants for first-class hoisting engineer's license shall:

(1) Have no less than three years' experience in the actual operation of hoisting equipment in this classification under an engineer holding a valid first-class license and successfully pass a written examination prescribed by the board and has passed his eighteenth (18th) birthday and is found to be competent to operate hoisting equipment in this classification shall be granted a first-class hoisting engineer's license; or

(2) Hold a valid second-class license and have no less than six (6) months' experience in the actual operation of hoisting equipment in this classification under an engineer holding a valid first-class license and successfully pass a written examination prescribed by the board and has passed his eighteenth (18th) birthday and is found to be competent to operate hoisting equipment in this classification shall be granted a first-class hoisting engineer's license.

(c) Applicants for first or second-class hoisting engineer's license holding a valid license in that classification from another state with licensing requirements equal to or exceeding the foregoing minimum requirements for the state of Montana and successfully pass a written examination prescribed by the board and is found to be competent to operate hoisting machinery in that classification shall be granted a license in that classification.

(d) Applicants for first or second-class hoisting engineer's license holding a valid first or second-class engineer's license for the operation of

boilers, steam machinery and hoisting engines for the state of Montana prior to enactment of this act shall, upon application during a period not to exceed twelve (12) months after enactment of this act, be granted a hoisting engineer's license in that classification.

**History:** En. Sec. 4, Ch. 104, L. 1915; re-en. Sec. 2733, R. C. M. 1921; amd. Sec. 20, Ch. 225, L. 1971; amd. Sec. 27, Ch. 94, L. 1973.

#### Compiler's Notes

This section as enacted contained no subsection (2).

#### Amendments

The 1971 amendment completely rewrote this section. For prior text, see parent volume.

The 1973 amendment reduced the minimum age specified in subdivision (1) (a) from twenty to eighteen years, and in subdivisions (1) (b) (1) and (1) (b) (2) from twenty-one to eighteen years; and made minor changes in style.

### 69-1605. (2734) Repealed.

#### Repeal

Section 69-1605 (Sec. 5, Ch. 104, L. 1915), relating to machinery which a li-

censee is qualified to operate, was repealed by Sec. 24, Ch. 225, Laws 1971.

**69-1607. (2736) Penalty for operating machinery without license.** Every person who operates any of the engines and machinery named in section 69-1601 for which a license is required, without first obtaining a license as required by the provisions of this act, and every owner, employer, or manager of any such engines or machinery who permits any unlicensed person to operate the same, or any person who violates any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment.

**History:** En. Sec. 7, Ch. 104, L. 1915; re-en. Sec. 2736, R. C. M. 1921; amd. Sec. 21, Ch. 225, L. 1971.

#### Amendments

The 1971 amendment deleted "knowingly" before "permits any unlicensed person."

## CHAPTER 17—TRACTION ENGINES—CAPACITY—INSPECTION

#### Section

69-1701. Computation of capacity of steam traction engines—marking on engines.

69-1702. Inspection—fees.

**69-1701. (4209) Computation of capacity of steam traction engines—marking on engines.** The capacity or initial power of all steam traction engines or machinery propelled or operated by steam, when sold or offered for sale within this state, must be computed and determined by the drawbar horsepower; that is, the initial pulling power of such engines or machinery, and not otherwise; and such power or capacity shall be plainly engraved in figures with the letters "H. P." on a metallic templet or plate, which templet or plate shall, before such engine or machine is sold or offered for sale, be securely fastened thereto, in such manner and place and of sufficient size as to be easily seen and read. And all new engines or machinery named herein shall be engraved or branded with the shop number, which shall be in some place easily observed.

**History:** En. Sec. 1, Ch. 125, L. 1913; re-en. Sec. 4209, R. C. M. 1921; amd. Sec. 22, Ch. 225, L. 1971.

**Amendments**

The 1971 amendment inserted "steam"

before "traction engines" near the beginning of the section; substituted "operated by steam" for "operated by gas, oil, or any product of oil" in the first sentence; and made a minor change in phraseology.

**69-1702. (4210) Inspection—fees.** Inspection of steam traction boilers and fees for inspection shall be in accordance with the applicable requirements of section [Title] 69, chapter 15.

**History:** En. Sec. 2, Ch. 125, L. 1913; re-en. Sec. 4210, R. C. M. 1921; amd. Sec. 23, Ch. 225, L. 1971.

**Compiler's Notes**

The compiler has inserted the bracketed word "Title."

**Amendments**

The 1971 amendment completely rewrote this section. For prior text, see parent volume.

**Repealing Clause**

Section 24 of Ch. 225, Laws 1971 read "Sections 69-1518, 69-1605 and 69-1703 are hereby repealed."

**69-1703. (4211) Repealed.**

**Repeal**

Section 69-1703 (Sec. 3, Ch. 125, L.

1913), establishing a penalty, was repealed by Sec. 24, Ch. 225, Laws 1971.

CHAPTER 19—EXPLOSIVES—REGULATION OF MANUFACTURE,  
STORAGE, SALE AND POSSESSION

**Section**

69-1931. Destructive device—explosive defined.

69-1932. Possession of destructive device or explosive with felonious intent—penalty.

**69-1910, 69-1911. (2795, 2796) Repealed.**

**Repeal**

Sections 69-1910, 69-1911 (Secs. 10, 11, Ch. 129, L. 1917; Sec. 8, Ch. 121, L. 1965),

relating to license fees and annual inspections, were repealed by Sec. 1, Ch. 352, Laws 1973.

**69-1922. (2807) Storage of explosives in mines.**

**Injured Employee's Remedies**

Despite blasting company's violation of this section it could not be held liable under common-law action for negligence without an allegation of intentional in-

jury by the defendant by deliberate infliction of harm where otherwise the remedy is within the workmen's compensation law. *Enberg v. Anaconda Co.*, 158 M 135, 489 P 2d 1036.

**69-1927. (2812) Careless use of explosives a misdemeanor.**

**Injured Employee's Remedies**

Plaintiff's complaint, alleging that a violation of the penal statute abrogates an employer's immunity from a common-law action where the injured employee is covered by workmen's compensation, fails

to make a claim for relief if it does not allege intentional injury in the sense of a deliberate infliction of harm by the defendant. *Enberg v. Anaconda Co.*, 158 M 135, 489 P 2d 1036.

**69-1930. (2815) Repealed.**

**Repeal**

Section 69-1930 (Sec. 3, p. 72, L. 1893), relating to storage of kerosene, petroleum, giant caps and coal oil within unincor-

porated towns, and to sales after dark, was repealed by Sec. 1, Ch. 352, Laws 1973.

**69-1931. Destructive device—explosive defined.** (1) "Destructive device" as used in this chapter, shall include, but is not limited to, the following weapons:



(a) Any projectile containing any explosive or incendiary material or any other chemical substance, including, but not limited to, that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns.

(b) Any bomb, grenade, explosive missile, or similar device or any launching device therefor.

(c) Any weapon of a caliber greater than .60 caliber which fires fixed ammunition, or any ammunition therefor, other than a shotgun or shotgun ammunition.

(d) Any rocket, rocket-propelled projectile, or similar device of a diameter greater than 0.60 inch, or any launching device therefor, and any rocket, rocket-propelled projectile or similar device containing any explosive or incendiary material or any other chemical substance, other than the propellant for such device, except such devices as are designed primarily for emergency or distress signaling purposes.

(e) Any breakable container which contains a flammable liquid with a flashpoint of 150 degrees Fahrenheit or less and has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

(2) "Explosive" as used in this chapter, shall mean any explosive defined in section 69-1901, R.C.M., 1947.

**History:** En. Sec. 1, Ch. 304, L. 1971.

**Title of Act.**

An act relating to possession of explo-

sives and destructive devices with intent to injure persons or property; setting penalties therefor.

**69-1932. Possession of destructive device or explosive with felonious intent—penalty.** (1) Every person who, with intent to commit a felony, has in his possession any destructive device or any explosive on a public street or highway, in or near any theater, hall, school, college, church, hotel, other public building, or private habitation, in, on, or near any aircraft, railway passenger train, car, vessel engaged in carrying passengers for hire, or other public place ordinarily passed by human beings is guilty of a felony, and shall be punishable by imprisonment in the state prison for a period of not more than ten (10) years.

**History:** En. Sec. 2, Ch. 304, L. 1971.

**Compiler's Notes**

This section as enacted contained no subsection (2).

## CHAPTER 21—BUILDING AND MOBILE HOME CONSTRUCTION STANDARDS

### Section

- 69-2105. Definitions.
- 69-2107. Applicable to public places outside municipalities—limitation of code.
- 69-2109. Duties of department.
- 69-2110. Purposes of state building code.
- 69-2111. Adoption of rules by department.
- 69-2113. Permit necessary.
- 69-2114. Department's powers—variances—review.
- 69-2119. Violation of order or codes a misdemeanor.
- 69-2122. Mobile homes—rule-making power.
- 69-2123. Compliance with the department's rules.
- 69-2124. Fees.

**69-2104. Repealed.**

**Repeal** Section 69-2104 (Sec. 1, Ch. 366, L. 1969), relating to the purposes of the act, was repealed by Sec. 14, Ch. 226, Laws of 1974.

**69-2105. Definitions.** As used in this chapter, unless the context requires otherwise:

(1) "Municipality" means any incorporated city or town and its jurisdictional area as defined by subsection (12) of this section.

(2) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation thereof enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair inspection, or use of buildings and installation of equipment in buildings. The term does not include zoning ordinances.

(3) "Department" means the department of administration provided for in Title 82A, chapter 2.

(4) "Local building department" means the agency or agencies of any municipality charged with the administration, supervision, or enforcement of building regulations, approval of plans, inspection of buildings, or the issuance of permits, licenses, certificates and similar documents, prescribed or required by state or local building regulations.

(5) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

(6) "Building" means a combination of any materials, whether mobile, portable, or fixed to form a structure and the related facilities for the use or occupancy by persons, or property. The word "building" shall be construed as though followed by the words "or part or parts thereof."

(7) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumb-waiters, escalators, and other mechanical additions or installations.

(8) "Construction" means the original construction, and equipment of buildings, and requirements or standards relating to or affecting materials used including provisions for safety and sanitary conditions.

(9) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm, or corporation, in control of a building.

(10) "Local legislative body" means the council or commission charged with governing the municipality.

(11) "State building code" means the state building code provided for in section 69-2111 or any portion of the code of limited application, and any of its modifications or amendments.

(12) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request of a municipality. Upon request the council may approve extension

of the jurisdictional area to include all or part of the area within four and one-half (4½) miles of the corporate limits of a municipality, measured in a straight line in a horizontal plane.

(13) "Public place" means any place which a municipality or state maintains for the use of the public, or a place where the public has a right to go and be.

(14) "Mobile home" means any dwelling unit larger than two hundred fifty-six (256) square feet in area which is either wholly or in substantial part manufactured at an off-site location and any movable or portable dwelling over thirty-two (32) feet in length and over eight (8) feet wide, constructed to be towed on its own chassis and designed without a permanent foundation for year-round occupancy, which includes one (1) or more components that can be retracted for towing purposes and subsequently expanded for additional capacity, or of two (2) or more units separately towable but designed to be joined into one (1) integral unit, as well as a portable dwelling composed of a single unit.

(15) "Recreational vehicle" means any movable or portable dwelling primarily designed as temporary living quarters for recreational, camping or travel use which either has its own motive power or is mounted on or drawn by another vehicle and which is less than thirty-two (32) feet in length.

History: En. Sec. 2, Ch. 366, L. 1969;  
amd. Sec. 1, Ch. 226, L. 1974.

#### Amendments

The 1974 amendment substituted "this chapter" for "this act" in the first sentence; deleted a definition of "Council";

substituted "as defined by subsection (12)" in subsection (1) for "as defined by subsection (13)"; added "provided for in Title 82A, chapter 2" in subsection (3); and added the definitions of "Mobile home" and "Recreational vehicle."

### 69-2106. Repealed.

#### Repeal

Section 69-2106 (Sec. 3, Ch. 366, L. 1969), relating to the state building code

council, was repealed by Sec. 14, Ch. 226, Laws of 1974.

**69-2107. Applicable to public places outside municipalities—limitation of code.** (1) Outside municipalities and their jurisdictional area as defined by section 69-2105, subsection (12) of this chapter, this chapter applies to "public places" as defined in section 69-2105, subsection (13).

(2) Where good and sufficient cause exists, a written request for limitation of the state building code may be filed with the department for filing as a permanent record. The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) and (b) \* \* \* [Same as parent volume.]

History: En. Sec. 4, Ch. 366, L. 1969;  
amd. Sec. 2, Ch. 226, L. 1974.

#### Amendments

The 1974 amendment substituted reference to "subsection (12)" in subsection (1) for reference to "subsection (13)"; substituted reference to "subsection (13)" in subsection (1) for reference to "subsection

(15) [14]"; substituted "this chapter" in subsection (1) for "this act"; substituted "department" for "state controller" in the first sentence of subsection (2) and for "council" in the second sentence; and deleted a former second sentence from subsection (2) which read "He shall submit the request to the council."



**69-2108. Repealed.****Repeal**

Section 69-2108 (Sec. 5, Ch. 366, L. 1969), relating to the state controller ad-

ministering the act, was repealed by Sec. 14, Ch. 226, Laws of 1974.

**69-2109. Duties of department.** The department shall administer this chapter, and for that purpose shall:

(1) issue orders necessary to effectuate the purposes of this act and enforce the orders by all appropriate administrative and judicial proceedings;

(2) enter, inspect, and examine buildings or premises necessary for the proper performance of its duties under this chapter;

(3) and (4) \* \* \* [Same as parent volume.]

(5) appoint experts, consultants, and technical advisers for assistance and recommendations relative to the formulation and adoption of the state building code;

(6) advise, consult, and co-operate with other agencies of the state, local governments, industries, and interested persons or groups.

**History:** En. Sec. 6, Ch. 266, L. 1969; amd. Sec. 3, Ch. 226, L. 1974.

visory committees" after "technical advisers" in subdivision (5); deleted "the council" after "co-operate with" in subdivision (6); deleted a final subdivision relating to making rules for the organization and internal management of the division; and made minor changes in phraseology.

**Amendments**

The 1974 amendment substituted the introductory sentence for "The state controller shall, under the guidance of the council"; substituted "this chapter" for "this act" in subdivision (2); deleted "ad-

**69-2110. Purposes of state building code.** The state building code shall be designed to effectuate the general purposes of this chapter and the following specific objectives and standards to:

(1) to (4) \* \* \* [Same as parent volume.]

**History:** En. Sec. 7, Ch. 266, L. 1969; amd. Sec. 4, Ch. 226, L. 1974.

**Amendments**

The 1974 amendment substituted "this chapter" for "this act" in the first sentence.

**69-2111. Adoption of rules by department.** (1) The department shall adopt by reference nationally recognized building codes in whole or in part, amend and repeal rules relating to the construction of all buildings or classes or buildings of the installation of equipment in those buildings, and may by rule prescribe standards or requirements for materials to be used in buildings including provisions dealing with safety and sanitation. The rules, when adopted as provided in this chapter, constitute the "state building code" and shall be acceptable for the buildings to which it is applicable.

(2) The department may hold hearings relating to the administration of this act in accordance with the Montana Administrative Procedure Act.

(3) Except as provided in subsection (4) of this section, no rule and no amendment or repeal of the state building code shall take effect until after a public hearing by the department.

(4) If a hearing has been held by the department of justice with respect to its duties contained in Title 82, chapter 12, the board of plumbers, the department of health and environmental sciences, or state electrical board on a proposed rule relating to building and equipment standards in their respective fields, a public hearing by the department is not required. The proposed rule is effective upon approval of the department and filing with the secretary of state as a part of the state building code.

(5) If a rule relating to building or equipment standards is proposed by the department of justice with respect to its duties contained in Title 82, chapter 12, board of plumbers, department of health and environmental sciences, or state electrical board which conflicts with the state building code, the department shall modify the proposed rule or the state building code to resolve the conflict after consultation with the state agencies affected.

**History:** En. Sec. 8, Ch. 266, L. 1969; amd. Sec. 5, Ch. 226, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "council" throughout the section; substituted "this chapter" for "this act" in subsection (1); substituted "in accordance with the Montana Administrative Procedure Act" for "and compel the attendance of witnesses and the production of evidence" in subsection (2); deleted provisions from subsection (3) relating to publication of notice of hearings; rewrote the first sentence of subsection (4) which read: "If a hearing has been held by a state fire marshal, state plumbing board, state board of health, or state electrical board on a proposed rule relating to

building and equipment standards in their respective fields, public hearing by the council is not required"; substituted "proposed by the department of justice with respect to its duties contained in Title 82, chapter 12, board of plumbers, department of health and environmental sciences" for "proposed by the state fire marshal, state plumbing board, state board of health" in subsection (5); deleted subsection (6) which read: "Nothing in this section requires a hearing prior to the issuance of an emergency order pursuant to the provisions of this act"; deleted subsections (7) through (10) pertaining to the distribution of proposed rules and the form and certification of rules; and made minor changes in phraseology and punctuation.

### 69-2112. Municipal building codes—applicability of state code.

#### Compiler's Notes

Section 11, Ch. 226, Laws 1974, substituted "department" in this section for

"state building code council" and "council."

**69-2113. Permit necessary.** Any person who desires to construct a building which is subject to the provisions of this chapter must apply for a permit from the appropriate authorities.

**History:** En. Sec. 10, Ch. 366, L. 1969; amd. Sec. 6, Ch. 226, L. 1974.

effective date of this act" from the beginning of the section; and substituted "this chapter" for "this act."

#### Amendments

The 1974 amendment deleted "After the

**69-2114. Department's powers—variances—review.** (1) The department has the power on satisfactory proof, after a public hearing, to:

(a) to (e) \* \* \* [Same as parent volume.]

(2) An application for a variance, modification, reversal, annulment, or review may be made by any person aggrieved pursuant to the Montana Administrative Procedure Act.

(a) An application for a variance, modification, reversal, annulment,

or review shall stay all proceedings in furtherance of the action appealed from unless there is a showing by the state agency that a stay would involve imminent peril to life or property.

(b) The department, in hearings conducted under this section, shall not be bound by common-law or statutory rules of evidence.

**History:** En. Sec. 11, Ch. 366, L. 1969; amd. Sec. 7, Ch. 226, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "council" in subsection (1) and subdivision (2)(b); substituted "Montana Administrative Procedures Act" in

the first sentence of subsection (2) for "procedure, conditions and rules as prescribed by the council"; deleted portions of subsection (2) relating to procedure for hearings and decisions of the council (see parent volume); and made minor changes in phraseology and punctuation.

### 69-2115. Repealed.

#### Repeal

Section 69-2115 (Sec. 12, Ch. 366, L.

1969), relating to judicial review, was repealed by Sec. 14, Ch. 226, Laws of 1974.

### 69-2116, 69-2117.

#### Compiler's Notes

Section 11, Ch. 226, Laws 1974, substituted "department" in these sections for

"state building code council" and "council."

**69-2119. Violation of order or codes a misdemeanor.** Any person, served with an order pursuant to the provisions of this chapter, who fails to comply with the order not later than thirty (30) days after service or within the time fixed by the department or a local building department for compliance, whichever is the greater, or any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any person taking part or assisting in the construction or use of any building who knowingly violates any of the applicable provisions of the state building code or a municipal building code is guilty of a misdemeanor.

**History:** En. Sec. 16, Ch. 366, L. 1969; amd. Sec. 8, Ch. 226, L. 1974.

#### Amendments

The 1974 amendment substituted "this chapter" for "this act" and "department" for "state controller" in the first sentence.

### 69-2120, 69-2121. Repealed.

#### Repeal

Sections 69-2120 and 69-2121 (Sec. 17, Ch. 366, L. 1969; Sec. 1, Ch. 348, L. 1971), relating to the effect of the act on other

rules and standards, and definitions of terms, were repealed by Sec. 14, Ch. 226, Laws of 1974.

**69-2122. Mobile homes—Rule-making power.** The department shall make rules embodying the fundamental principles adopted, recommended, or issued as USAS A119.1 and USAS A119.2 and amended from time to time by the United States of America Standards Institute (USASI), successor to the American Standards Association (ASA) and American National Standards applicable to mobile homes and recreational vehicles as defined in section 69-2105.

**History:** En. Sec. 2, Ch. 348, L. 1971; amd. Sec. 9, Ch. 226, L. 1974.

agraph which read: "Mobile homes and recreational vehicles, because of the manner of their construction, assembly and use and that of their systems, components and appliances (including heating, plumbing

#### Amendments

The 1974 amendment deleted a first par-



and electrical systems) like other finished products having concealed vital parts may present hazards to the health, life and safety of persons and to the safety of property unless properly manufactured. In the sale of mobile homes and recreational vehicles, there is also the possibility of defects not readily ascertainable when inspected by purchasers. It is the policy and purpose of this state to provide protection

to the public against those possible hazards, and for that purpose to forbid the manufacture and sale of new mobile homes and recreational vehicles which are not so constructed as to provide reasonable safety and protection to their owners and users"; substituted "department" for "council" in the first sentence; and made minor changes in phraseology.

**69-2123. Compliance with the department's rules.** No person, firm or corporation may manufacture, sell, or offer for sale any mobile home or recreational vehicle, unless such mobile home or recreational vehicle, its components, systems and appliances have been constructed and assembled in accordance with the standards herein defined. Any mobile home or recreational vehicle unit which has been approved by the department shall be deemed to be in full compliance with the standards and rules and regulations prescribed in this chapter. All mobile home or recreational vehicle units thus approved shall be acceptable as meeting the requirements of this chapter throughout the state of Montana without further inspection or fees except for zoning, utility connections and foundation permits required by local ordinance.

History: En. Sec. 3, Ch. 348, L. 1971; amd. Sec. 10, Ch. 226, L. 1974.

#### Amendments

The 1974 amendment deleted "which has been constructed more than twelve (12) months after the effective date of this act"

after "any mobile home or recreational vehicle" in the first sentence; substituted "department" for "council" in the second sentence; and substituted "this chapter" for "this act" in the second and third sentences.

**69-2124. Fees.** The department shall establish a schedule of fees for the inspection of plans and specifications for mobile homes or recreational vehicles and for the inspection of individual units. The department may utilize independent testing laboratories or the agencies of other states to determine if approved models of mobile homes or recreational vehicles are being constructed in accordance with the approved plans and specifications for said models.

History: En. Sec. 4, Ch. 348, L. 1971; amd. Sec. 11, Ch. 226, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "council" in two places.

## CHAPTER 22—BLOOD AND BLOOD PRODUCTS

### Section

- 69-2203. Medical use of blood and blood products declared service and not sale—immunity of physicians and hospitals.
- 69-2204. Immunity of blood banks.
- 69-2205. Labeling of containers by blood banks required.

**69-2203. Medical use of blood and blood products declared service and not sale—immunity of physicians and hospitals.** The furnishing of, and the injecting or transfusing into the human body, of whole blood, plasma, blood products, and blood derivatives, by a hospital or doctor, of any such substances, obtained by such hospital or doctor so furnishing, injecting or transfusing the same, from any source or sources which

said hospital or doctor is not directly or indirectly financially interested in, or has any control over, is hereby declared not to be a sale of such whole blood, plasma, blood products, or blood derivatives for any purpose or purposes, and no physician or hospital may be held liable, in the absence of fault or negligence on the part of such a hospital or doctor for injuries resulting from the furnishing or performing of such services.

**History:** En. Sec. 1, Ch. 284, L. 1971.

**Title of Act**

An act establishing that the use of certain whole blood, plasma, blood products, and blood derivatives by physicians and hospitals for the purpose of injecting or transfusing any of them into the human body is a service and not a sale; pro-

viding that blood banks shall not be liable for such products disbursed by them in the absence of negligence if such products have been tested by certain testing procedures and found by such tests to not be dangerous to the health of a prospective recipient, and requiring the labeling by such blood banks of such products sold.

**69-2204. Immunity of blood banks.** No blood bank may be held liable in the absence of fault or negligence for injuries resulting from the injecting or transfusing of whole blood, plasma, blood products, or blood derivatives supplied by any such blood bank to any hospital or physician if such blood products so furnished have been tested by the latest testing procedures in accordance with recommendations of the American association of blood banks and by such test is not found to be dangerous to the health of the recipient of such blood products.

**History:** En. Sec. 2, Ch. 284, L. 1971.

**69-2205. Labeling of containers by blood banks required.** That each container or package containing any whole blood, plasma, blood products, and blood derivatives, sold by a blood bank shall have plainly stamped or printed thereon the fact that the product therein contained was tested as required in section 2 [69-2204] hereof, giving the date of the test and such information as is necessary to designate the type of test made.

**History:** En. Sec. 3, Ch. 284, L. 1971.

## CHAPTER 23—ANATOMICAL GIFT ACT

### 69-2315. Definitions.

NOTE.—Uniform State Law. In addition to the states listed in the parent volume, the following states have enacted the "Uniform Anatomical Gift Act": Alabama, Alaska, Arkansas, Colorado, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Maine, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Okla-

homa, Oregon, South Carolina, South Dakota, Tennessee, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

The following state has enacted provisions which are substantially similar to the Uniform Anatomical Gift Act: Louisiana.

## CHAPTER 27—FIREWORKS REGULATION

### Section

69-2701. Fireworks prohibited and defined for the purposes of this act.

**69-2701. Fireworks prohibited and defined for the purposes of this act.** a. \* \* \* [Same as parent volume.]

b. The term "fireworks" shall mean and include any combustible, or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, and shall include sky rockets, Roman candles, Daygo bombs, blank cartridges, toy cannons, toy canes, or toy guns in which explosives other than toy paper caps are used, the type of balloons which require fire underneath to propel the same, firecrackers, torpedoes, sparklers or other fireworks of like construction and any fireworks containing any explosive or flammable compound or any tablets or other device containing any explosive substance. Nothing in this law shall be construed as applying to toy paper caps containing not more than twenty-five hundredths (.25) of a grain of explosive composition per cap, and to the manufacture, storage, sale or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, nor applying to the military or navy forces of the United States or of this state, or to peace officers, nor as prohibiting the sale or use of blank cartridges for ceremonial, or theatrical, or athletic events.

c. It shall be lawful for any individual, firm, partnership, corporation or association to possess for sale within the state, sell or offer for sale, at retail, or use, within the state of Montana, the permissible fireworks herewith enumerated.

Permissible fireworks shall include dangerous articles and, more specifically, shall include and be limited to the following, but specifically excluding sky rockets, Roman candles and Daygo bombs, firecrackers and bottle rockets:

(1) Helicopter type spinners, total pyrotechnic composition not to exceed twenty (20) grams each in weight;

(2) Cylindrical fountains, total pyrotechnic composition not to exceed twenty-five (25) grams each in weight. The inside tube diameter shall not exceed three-fourths ( $\frac{3}{4}$ ) inch;

(3) Cone fountains, total pyrotechnic composition not to exceed fifty (50) grams each in weight;

(4) Wheels, total pyrotechnic composition not to exceed sixty (60) grams in weight, for each driver unit, but there may be any number of drivers on any one wheel. The inside bore of driver tubes shall not be over one-half ( $\frac{1}{2}$ ) inch;

(5) Illuminating torches and colored fire in any form, total pyrotechnic composition not to exceed one hundred (100) grams each in weight;

(6) Sparklers and dipped sticks, total pyrotechnic composition not to exceed one hundred (100) grams each in weight. Pyrotechnic composition containing any chlorate shall not exceed five (5) grams;

(7) Whistles without report, total pyrotechnic composition not to exceed forty (40) grams each in weight;

It shall be unlawful for any individual under the age of eighteen (18) to possess for sale, sell or offer for sale, within the state of Montana, permissive fireworks herein enumerated.



It shall be unlawful for any wholesaler to sell or offer for sale, within the state of Montana, fireworks except as herein defined. It shall be lawful for said wholesaler, however, to transport said fireworks within the state of Montana for sale outside of the state of Montana.

d. and e. \* \* \* [Same as parent volume.]

**History:** En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974.

#### Amendments

The 1971 amendment reduced the age specified in the paragraph following the numbered subdivisions in subsection c from twenty-one to eighteen years, and made minor changes in style.

The 1974 amendment added "firecrackers and bottle rockets" at the end of the second paragraph of subdivision e; and deleted former subsection (7) which read: "Firecrackers with soft casings, the external dimensions of which do not exceed one and one-half ( $1\frac{1}{2}$ ) inches in length or one-quarter ( $\frac{1}{4}$ ) inch in diameter, total pyrotechnic composition not to exceed two (2) grains each in weight;" and redesignated former subsection (8) as (7).

### CHAPTER 33—GEOPHYSICAL EXPLORATION

#### 69-3304. Surety bond required, etc.

##### Sealing of Shot Holes

Sealing "shot" holes by pouring excess cuttings down them and plugging the orifice with an aluminum plug by forcing it down into the hole so that the top of the plug was below plow depth, was in compliance with this section when the holes were only four and one-half inches in diameter in view of expert testimony

that seismographic holes tend to slough and cave, releasing lateral support from materials around the hole and that the pressure from the weight of the earth above has a tendency to force the material toward the center, sealing the hole. Haynie v. Northern Pacific Ry. Co., 158 M 247, 490 P 2d 715.

### CHAPTER 34—SANITARIANS

#### Section

- 69-3410. Definitions.
- 69-3411. Sanitarians—must be licensed.
- 69-3412. Board of sanitarians—creation—members.
- 69-3413. Terms of members.
- 69-3414. Compensation of members.
- 69-3415. Application for license—procedure—examination.
- 69-3416. License fees.
- 69-3417. Fees—to earmarked revenue fund.
- 69-3418. Adoption of rules—suspension of license.
- 69-3419. Licensing of other sanitarians.
- 69-3420. Penalty.
- 69-3421. Prior registration as sanitarian still valid.
- 69-3422. Sanitarian practicing before act—how licensed.
- 69-3423. Board of health and environmental sciences—rules and orders remain in effect.

#### 69-3401 to 69-3407. Repealed.

##### Repeal

Sections 69-3401 to 69-3407 (Secs. 1 to 7, Ch. 174, L. 1959; Sec. 119, Ch. 147, L. 1963; Secs. 1 to 6, Ch. 271, L. 1971; Secs. 8 to 10, 107, Ch. 349, L. 1974), relating

to definitions, administration, examinations and fees, revocation or suspension, and reciprocity, were repealed by Sec. 5, Ch. 314, Laws of 1974.

#### 69-3408, 69-3409. Repealed.

##### Repeal

Sections 69-3408 and 69-3409 (Secs. 8, 9, Ch. 174, L. 1959; Secs. 7, 8, Ch. 271, L. 1971), relating to appeals and service of

process, were repealed by Sec. 5, Ch. 314, Laws of 1974; Sec. 113, Ch. 349, Laws of 1974.

**69-3410. Definitions.** Unless the context requires otherwise, as used in this act:

(1) "Board" means the board of sanitarians provided for in section 3 [69-3412].

(2) "Department" means the department of professional and occupational licensing provided for in Title 82A, chapter 16.

(3) "Registered sanitarian" means a sanitarian licensed under this act.

(4) "Sanitarian," within the meaning and intent of this act, shall mean a person who, by reason of his special knowledge of the physical, biological and chemical sciences, and the principles and methods of public health, acquired by professional education and practical experience through inspectional, educational and/or enforcement duties, is qualified to practice the profession of sanitarian.

(5) "Practice the profession of sanitarian" means planning, inspectional, educational or enforcement duties in the field of environmental sanitation.

(6) Persons exempt from the requirements of this act, unless practicing the profession of sanitarian are:

(a) any person teaching, lecturing or engaging in research in environmental sanitation but only in so far as such activities are performed as part of an academic position in a college or university;

(b) any person who is a sanitary engineer, public health engineer, registered professional engineer, or engineer in training;

(c) any public health officer employed pursuant to section 69-4509, R. C. M. 1947, and

(d) any person employed by a federal governmental agency but only at such times as the person is carrying out the functions of his employment.

History: En. 69-3410 by Sec. 1, Ch. 314,  
L. 1974.

**69-3411. Sanitarians—must be licensed.** A person may not practice the profession of a sanitarian or hold himself out to be a sanitarian unless he is licensed under this act.

History: En. 69-3411 by Sec. 2, Ch. 314,  
L. 1974.

**69-3412. Board of sanitarians—creation—members.** (1) There is a board of sanitarians.

(2) The board shall consist of three (3) members appointed by the governor. Each member shall be a resident of this state and a registered sanitarian. Each member shall have a minimum of three (3) years of experience practicing as a sanitarian in the state of Montana.

History: En. 69-3412 by Sec. 3, Ch. 314,  
L. 1974.

**69-3413. Terms of members.** Members of the first board shall serve for one (1), two (2), or three (3) years as designated by the governor. After

initial appointments, appointed members shall serve for three (3) year terms. One (1) term shall expire on July 1 of each year.

History: En. 69-3413 by Sec. 4, Ch. 314,  
L. 1974.

**69-3414. Compensation of members.** (1) Members of the board shall receive compensation of twenty-five dollars (\$25) per day plus actual and necessary expenses and mileage as provided in section 59-801 while engaged in business of the board.

(2) The board shall appoint one (1) of its members chairman. The board shall meet at least once annually and at such other times as agreed upon. The board shall not meet more than four (4) times in any year.

History: En. 69-3414 by Sec. 5, Ch. 314,  
L. 1974.

**69-3415. Application for license—procedure—examination.** (1) A person wishing to practice the profession of sanitarian may apply to the department for registration on a form prescribed by the board.

(2) An applicant must meet minimum standards set by the board and must pass an examination given at a time and place set by the board, but not to exceed one (1) year past the date of issuance of the probationary certificate described in the subsection (3) below.

(3) Upon application for registration and payment of the registration fee, a probationary certificate shall be issued.

(4) If the applicant meets the board's standards and passes the examination prescribed by the board, the department shall issue a certificate of registration upon payment of the required fee. Holders of current certificates shall be entitled to append to their name the initials "R.S."

History: En. 69-3415 by Sec. 6, Ch. 314,  
L. 1974.

**69-3416. License fees.** (1) An applicant for a license shall pay a fee of thirty-five dollars (\$35).

(2) A registered sanitarian may renew his license by paying an annual fee set by the board, not to exceed ten dollars (\$10).

(3) Renewal fees are due July 1 of the renewal year. If the renewal fee is not paid the license expires. Licenses which have lapsed for failure to pay renewal fees may be reissued under rules adopted by the board.

History: En. 69-3416 by Sec. 7, Ch. 314,  
L. 1974.

**69-3417. Fees—to earmarked revenue fund.** All fees collected by the department shall be deposited in the earmarked revenue fund for the use of the board subject to section 82A-1603(6).

History: En. 69-3417 by Sec. 8, Ch. 314,  
L. 1974.

**69-3418. Adoption of rules—suspension of license.** (1) The board may adopt rules consistent with this act for its administration.



(2) The board may suspend or revoke a license for the following reasons:

- (a) unprofessional conduct;
- (b) fraud and deceit in obtaining a license;
- (c) gross negligence, incompetency or misconduct in the practice as a sanitarian; or
- (d) on the conviction of a crime involving moral turpitude.

(3) The board's rule making and hearing functions shall be in accordance with the Montana Administrative Procedure Act.

History: En. 69-3418 by Sec. 9, Ch. 314,  
L. 1974.

**69-3419. Licensing of other sanitarians.** The department shall issue a license without examination to a person who applies to the department, pays a fee of thirty-five dollars (\$35) and submits satisfactory proof to the board that:

- (1) he is of good moral character; and
- (2) he is registered or licensed as a sanitarian in a state which has requirements comparable to those in this state.

History: En. 69-3419 by Sec. 10, Ch. 314,  
L. 1974.

**69-3420. Penalty.** A person who offers his services as a sanitarian, or uses, assumes, or advertises in any way, any title, or description tending to convey the impression that he is a sanitarian, who does not hold the license specified by this act is guilty of a misdemeanor and is punishable by a fine not to exceed five hundred dollars (\$500), or imprisonment for not longer than six (6) months, or both.

History: En. 69-3420 by Sec. 11, Ch. 314,  
L. 1974.

**69-3421. Prior registration as sanitarian still valid.** All persons previously registered under sections 69-3401 through 69-3409 are registered sanitarians for purposes of this act.

History: En. 69-3421 by Sec. 12, Ch. 314,  
L. 1974.

**69-3422. Sanitarian practicing before act—how licensed.** All persons having practiced as a sanitarian defined by section 1(5) [69-3410(5)] of this act for one (1) year prior to the effective date of this act may be registered as sanitarians upon making application and payment of the required fee.

History: En. 69-3422 by Sec. 13, Ch. 314,  
L. 1974.

**69-3423. Board of health and environmental sciences—rules and orders remain in effect.** All rules and orders adopted by the board of health and environmental sciences under section 69-3402 remain in effect until amended or repealed by the board of sanitarians.

History: En. 69-3423 by Sec. 14, Ch. 314, "Sections 69-3401, 69-3402, 69-3403, 69-3404, 69-3405, 69-3406, 69-3407, 69-3408, and 69-3409 are repealed."

#### Repealing Clause

Section 15 of Ch. 314, Laws 1974 read

### CHAPTER 35—MOTORBOAT AND VESSEL REGULATION

#### Section

- 69-3502. Definitions.
- 69-3503. Operation of unnumbered motorboats prohibited—display of decals.
- 69-3504. Identification number.
- 69-3504.1. License decals to be displayed.
- 69-3505. Equipment.
- 69-3506. Exemption from numbering provisions of this act.
- 69-3508. Prohibited operation and mooring—enforcement.
- 69-3508.1. Discharge of waste from vessel prohibited.
- 69-3508.2. Penalty for discharge of waste from vessel.
- 69-3510. Restricted areas.
- 69-3512. Collisions, accidents and casualties.
- 69-3514. Water-skis and surfboards.
- 69-3516.1. Education program.
- 69-3517. Enforcement of act.
- 69-3518. Penalty.

**69-3502. Definitions.** As used in this act, unless the context clearly requires a different meaning:

(1) "Vessel": means every description of watercraft, unless otherwise defined by the fish and game commission of the state of Montana, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(2) "Motorboat" means any vessel propelled by machinery, any motor or engine of any description, whether or not such machinery, motor or engine is the principal source of propulsion, including boats temporarily equipped with detachable motors or engines, but shall not include a vessel which has a valid marine document issued by the U.S. coast guard of the United States government or any federal agency successor thereto.

(3) to (6). \* \* \* [Same as parent volume.]

(7) The word "board" shall mean the fish and game commission of the state of Montana in all sections of this act.

(8) "Certificate of number" means the certificate issued annually by the board of equalization to the owner of a motorboat, awarding such motorboat an identifying number and will contain such information as required.

(9) "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat.

(10) "License decals" mean the serially numbered license stickers issued annually by the board of equalization, and displayed as required by law.

(11) "Passenger" means every person carried on board a vessel other than:

- (a) the owner or his representative;
- (b) the operator;

(c) bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services; or

(d) any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his carriage.

(12) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

(13) "Documented vessel" means a vessel which has and is required to have a valid marine document as a vessel of the United States.

(14) "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

**History:** En. Sec. 2, Ch. 285, L. 1959; amd. Sec. 1, Ch. 230, L. 1963; amd. Sec. 44, Ch. 391, L. 1973; amd. Sec. 1, Ch. 514, L. 1973.

#### Compiler's Notes

This section was amended twice in 1973, once by Ch. 391, and once by Ch. 514. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 391, Laws of 1973, deleted "except for section 69-3504, in which section the word 'board' shall mean the board of equalization of the state of Montana" from the end of subdivision (7).

Chapter 514, Laws of 1973 abolished the distinction in subsection (1) between the definitions of "vessel" for the purposes of registration and for purposes of safety regulations; deleted from subsection (1) a definition for purposes of registration by incorporation of section 3 of Public Law 85-911; made the phrase "unless otherwise defined by the fish and game commission of the state of Montana" applicable for all purposes in subsection (1); inserted the references to motors and engines and the phrase "including boats temporarily equipped with detachable motors or engines" in subsection (2); substituted "U. S. coast guard" for "bureau of customs" near the end of subsection (2); added subsections (8) through (14); and made minor changes in style and phraseology.

**69-3503. Operation of unnumbered motorboats prohibited—display of decals.** Every motorboat on the waters of this state propelled by motor or engine of any description of more than eight (8) horsepower shall be properly numbered and display valid license decals. No person shall operate or give permission for the operation of any motorboat on such waters unless the motorboat is numbered and displays valid license decals in accordance with this act, in accordance with applicable federal law, or in accordance with a federally approved numbering system of another state, unless (1) the certificate of number awarded to such motorboat is in full force and effect, and (2) the identifying number set forth in the certificate of number and the valid license decals are displayed on such motorboat.

**History:** En. Sec. 3, Ch. 285, L. 1959; amd. Sec. 1, Ch. 348, L. 1969; amd. Sec. 2, Ch. 514, L. 1973.

#### Amendments

The 1973 amendment deleted "or vessel" following "motorboat" throughout the sec-

tion; substituted "motor or engine of any description" for "machinery" in the first sentence; inserted "properly" near the end of the first sentence; and inserted references to display of license decals in the first and second sentences.



**69-3504. Identification number.** (a) The owner of each motorboat requiring numbering by this state shall file an application for number in the office of the county treasurer wherein the motorboat or vessel is owned or taxable, on forms prepared and furnished by the registrar of motor vehicles. The application shall be signed by the owner of the motorboat and shall be accompanied by a fee of one (\$1) dollar. Any alteration, change or false statement contained in the application for certificate of registration will render the certificate of number null and void. Upon receipt of the application in approved form the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the registrar of motor vehicles, stating the number awarded to the motorboat and the name and address of the owner. The number awarded must be painted on or attached to each outboard side of the forward half of the motorboat, or if there are no such sides, at a corresponding location on both outboard sides of the foredeck of the motorboat for which it is issued. The number awarded shall read from left to right, in Arabic numerals, in block characters of good proportion, a minimum of three (3) inches in height, excluding border or trim, and of a color which shall contrast with the color of the background, and so maintained as to be clearly visible and legible. The number shall not be placed on the obscured underside of the flared bow where the angle is such that the numbers cannot be easily seen from another vessel or ashore. No numerals, letters or devices other than those used in connection with the identifying number issued shall be placed in the proximity of the identifying number, and no numerals, letters or devices which might interfere with the ready identification of the motorboat by its identifying number shall be carried as to interfere with the motorboat's identification. The certificate of number shall be pocket size and shall be available to federal, state or local law enforcement officers at all reasonable times for inspection on the motorboat for which issued, whenever the motorboat is on waters of this state, except boat liveries are not required to have the certificate of number on board each motorboat, except that a rental agreement must be carried on board livery motorboats in place of the certificate of number.

(b) Before filing such application with the county treasurer, the applicant shall submit the same to the county assessor of said county and said county assessor shall enter on said application in a space to be provided for that purpose, the full and true and assessed valuation of said vehicle for the year for which said application for registration is made.

(c) The applicant shall, upon the filing of the application, pay to the county treasurer, the registration fee and shall also pay the personal property taxes assessed against the motorboat or vessel for the current year of registration before the application for registration or reregistration may be accepted by the county treasurer.

(d) The numbering requirements of this act shall apply to motorboats operated by dealers, manufacturers or their employees as follows:

(1) A dealer or manufacturer may apply directly to the registrar of motor vehicles for one (1) identifying number and one (1) or more certificates of number. A dealer's or manufacturer's identifying number shall be displayed on a dealer's or manufacturer's boat while the boat is operating

for a purpose related to the buying, selling, or exchanging of the boat by the dealer.

(2) The application for a dealer's or manufacturer's identifying number shall include the name of the dealer or manufacturer and the business address of the dealer or manufacturer. Each dealer or manufacturer shall have one (1) identifying number assigned to his business.

(3) An application for dealer's or manufacturer's identifying number and certificate of number shall be accompanied by the following fees:

(A) for the identifying number, first certificate of number, and set of license decals, five dollars (\$5);

(B) for each additional certificate of number and set of license decals applied for in any application, two dollars (\$2).

(4) The registrar of motor vehicles shall issue certificates of number for identifying number awarded to a dealer or manufacturer in the same manner as provided in section 69-3504(a), except that no boat shall be described in the certificate and each certificate shall state that the identifying number has been awarded to a dealer or manufacturer. A dealer's or manufacturer's certificate of number expires on April 30 of the year for which it is issued.

(5) A dealer's or manufacturer's identifying number shall be displayed in the same manner as provided in section 69-3504 (a) of this act, except that the number may be temporarily attached, and that the last three (3) letters shall be "DLR" for dealer and "MFR" for manufacturer; these letters shall be included, respectively, in dealer or manufacturer identification numbers only.

(6) No person other than a dealer or manufacturer or an employee of a dealer or manufacturer shall display or use a dealer's or manufacturer's identifying number. A dealer's or manufacturer's identifying number may be displayed only on motorboats owned by the dealer or manufacturer.

(7) No dealer or manufacturer or employee of a dealer or manufacturer shall use a dealer's or manufacturer's identifying number for any purpose other than the purpose described in subsection (1) of this section.

(e) The owner of any motorboat already covered by a number in full force and effect, which has been awarded to it pursuant to then operative federal law or a federally approved numbering system of another state, shall record the number prior to operating the motorboat on the waters of this state in excess of the sixty (60) day reciprocity period provided for in section 69-3506 (1) of this act. Such recordation shall be in the manner and pursuant to the procedure required for the award of number under subsection (a) of this section.

(f) Should the ownership of a motorboat change, within a reasonable time a new application form with fee shall be filed with the county treasurer and a new certificate of number shall be awarded in the same manner as provided for in an original award of number.

(g) If an agency of the United States government has in force an over-all system of identification numbering for motorboats in the United States, the numbering system employed pursuant to this act by the registrar of motor vehicles shall be in conformity therewith.



(h) Every certificate of number and the license decals awarded under this act shall continue in effect for a period not to exceed one (1) year, unless sooner terminated or discontinued in accordance with the provisions of this act. Certificates of number and license decals shall show the date of expiration thereon and may be renewed by the owner in the same manner provided for in the initial securing of the certificate.

(i) Certificates of number due shall expire on April 30 of each calendar year and shall no longer be of any effect unless renewed under this act.

(j) In event of transfer of ownership, the purchaser shall furnish the county treasurer notice of the acquisition of all or any part of his interest other than the creation of a security interest in a motorboat numbered in this state under this section, or of the loss, theft, destruction or abandonment of the motorboat, within reasonable time thereof. Such transfer, loss, theft, destruction or abandonment shall terminate the certificate of number for the motorboat except that in the case of a recovery from theft, or transfer of a part interest which does not affect the owner's right to operate the motorboat, the recovery or transfer does not terminate the certificate of number.

(k) A holder of a certificate of number shall notify the county treasurer within reasonable time if his address no longer conforms to the address appearing on the certificate and shall, as a part of the notification, furnish the county treasurer with his new address. The registrar of motor vehicles may provide in its rules for the surrender of the certificates bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

(l) No number other than the number and license decal awarded to a motorboat or granted reciprocity under this act, shall be painted, attached or otherwise displayed on either side of the forward half of the motorboat.

(m) Fees collected under this section shall be transmitted to the state treasurer who shall deposit the fees in the motorboat certificate identification account of an earmarked revenue fund. These fees shall be used only for the administration and enforcement of sections 69-3501 through 69-3518.

(n) An owner of a motorboat must notify the registrar of motor vehicles, giving the motorboat's identifying number and the owner's name, within reasonable time, when that motorboat becomes documented as a vessel of the United States, is transferred, lost, destroyed, abandoned, frauded, or within sixty (60) days after change of state of principal use.

**History:** En. Sec. 4, Ch. 285, L. 1959; amd. Sec. 1, Ch. 219, L. 1961; amd. Sec. 1, Ch. 336, L. 1969; amd. Sec. 2, Ch. 348, L. 1969; amd. Sec. 45, Ch. 391, L. 1973; amd. Sec. 51, Ch. 511, L. 1973; amd. Sec. 3, Ch. 514, L. 1973; amd. Sec. 1, Ch. 52, L. 1974.

#### Compiler's Notes

This section was amended three times in 1973, once by Ch. 391, once by Ch. 511 and once by Ch. 514. None of the amendatory acts mentioned or entirely incorporated the changes made by either

of the others. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by all three amendments.

#### Amendments

Chapter 391, Laws of 1973, substituted "state department of revenue" for "board" throughout the section.

Chapter 511, Laws of 1973, substituted "department of revenue" for "board" near the end of the first sentence in subsection (a); substituted "department of law enforcement and public safety" for "reg-



istrar of motor vehicles of the state" in the second sentence of subsection (g); and made minor changes in style, phraseology and punctuation.

Chapter 514, Laws of 1973, deleted "or vessel" following "motorboat" throughout the section; deleted "accompanied by a certificate of tax of personal property showing payment of tax on the motorboat or vessel for the current year" after "application for number" in the first sentence of subsection (a); inserted the third sentence in subsection (a); substituted "each outboard side of the forward half" in the fifth sentence of subsection (a) for "each side of the bow"; inserted the latter part of the fifth sentence of subsection (a), beginning "or if there are no such sides"; substituted the sixth and seventh sentences of subsection (a) for "in such manner as may be prescribed by rules and regulations of the board, in order that it may be clearly visible"; substituted the eighth sentence of subsection (a) for a sentence reading "The number shall be maintained in legible condition"; inserted "to federal, state or local law enforcement officers" in the final sentence of subsection (a); substituted "at all reasonable times" for "at all times" in the final sentence of subsection (a); substituted "is on waters of this state" in the final sentence of subsection (a) for "is in operation"; added to the end of subsection (a) the exceptions relating to boat liveries; completely rewrote subsection (b), for previous text of which see parent volume; reduced the reciprocity period referred to in the first sentence of subsection (c) from 90 to 60 days; deleted "except that no additional or substitute number shall be issued" from the end of subsection (c); inserted "within a reasonable time" in subsection (d); inserted "board or" before "registrar" near the end of subsection (g); inserted references to license decals in subsections (h) and (l); deleted "and shall be renewed annually" before "unless sooner terminated" in the first sentence of subsection (h); substituted "Certificates of number due shall expire on

April 30 of each calendar year" at the beginning of subsection (l) for "The board shall fix a day and month of the year on which certificates of number due to expire during the calendar year shall lapse"; inserted references to loss, theft and recovery in subsection (j); substituted "forward half" for "bow" near the end of subsection (l); added subsection (n); and made minor changes in phraseology.

The 1974 amendment substituted "in the office of the county treasurer wherein the motorboat or vessel is owned or taxable, on forms prepared and furnished by the registrar of motor vehicles" at the end of the first sentence of subdivision (a) for "with the state department of revenue or its designated representative, on forms approved by the state department of revenue"; substituted "the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the registrar of motor vehicles" near the beginning of the fourth sentence of subdivision (a) for "and certificate hereinabove referred to, the state department of revenue shall enter the same upon the records of its office and"; inserted subdivisions (b) and (c) and redesignated subsequent subdivisions accordingly; substituted "registrar of motor vehicles" for "board" in subdivisions (d), (g) and (n); substituted "registrar of motor vehicles" for "state department of revenue" in subdivision (a) and in the second sentence of subdivision (k); substituted "county treasurer" for "state department of revenue" in two places in subdivision (a), in subdivisions (f), (j) and in the first sentence of subdivision (k); deleted "provided further that the number assigned may be determined by the state department of revenue" from the end of subdivision (f) (formerly subdivision (d)); deleted former subdivisions (f) and (g) providing, in substance, for the delegation of authority by the state department of revenue, the keeping of records, and the submission of copies to law enforcement authorities; and made minor changes in style, punctuation, and phraseology.

**69-3504.1. License decals to be displayed.** (1) Every Montana boat numbered in accordance with the provisions of section 69-3504 shall be required to display license decals. For this purpose the county treasurer, upon receipt of a certificate of tax of personal property showing payment of tax on the motorboat for the current year, shall issue a pair of decals prepared and furnished by the registrar of motor vehicles with all new certificates of number and renewals thereof.

(2) The decals shall be of a style and design prescribed by the registrar of motor vehicles, and shall be a color differing from the preceding year. The license decal will be serially numbered and have the expiration date of April 30 of the appropriate year printed thereon.

(3) License decals shall be displayed only in the following manner:

One valid license decal on each side of the forward half three (3) inches aft of the identifying numbers.

History: En. Sec. 3, Ch. 348, L. 1969; amd. Sec. 46, Ch. 391, L. 1973; amd. Sec. 4, Ch. 514, L. 1973; amd. Sec. 2, Ch. 52, L. 1974.

#### Compiler's Notes

This section was amended twice in 1973, once by Ch. 391 and once by Ch. 514. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

#### Amendments

Chapter 391, Laws of 1973, substituted "department of revenue" for "board of equalization" in subsections (1) and (2).

Chapter 514, Laws of 1973, inserted "license" before "decal" throughout the section; deleted "thereon as visual proof the boat is currently registered" from the end

of the first sentence in subsection (1); inserted "upon receipt by said board of a certificate of tax of personal property showing payment of tax on the motorboat for the current year" in the second sentence of subsection (1); added the second and third sentences to subsection (2); and completely rewrote subsection (3), for previous text of which see parent volume.

The 1974 amendment substituted "county treasurer" for "state department of revenue" in the second sentence of subdivision (1); inserted "prepared and furnished by the registrar of motor vehicles" after "decals" near the end of subdivision (1); substituted "registrar of motor vehicles" near the beginning of subdivision (2) for "state department of revenue"; deleted "The style and design shall be prescribed by the board" from the end of subdivision (2); and made a minor change in phraseology.

**69-3505. Equipment.** (1) Every motorboat or vessel shall have aboard:

(a) One United States coast guard approved personal flotation device in good and serviceable condition for each person on board, provided, that any person who has not reached his twelfth birthday shall have a United States coast guard approved life preserver properly fastened to his person when occupying a motorboat or vessel under twenty-six (26) feet in length while such motorboat or vessel is in motion. The fish and game commission shall have the authority to designate waters and time of year on these waters where all persons aboard a motorboat or vessel must wear approved life preservers at all times.

(b) When in operation or at anchor or moored away from a docking facility between sunset and sunrise all vessels shall display lights as prescribed by the board.

(c) If carrying or using any inflammable or toxic fluid in any enclosure for any purpose, and if not an entirely open motorboat or vessel, an efficient natural or mechanical ventilation system prescribed by the board which shall be used and be capable of removing resulting gases prior to, and during the time the motorboat or vessel is occupied by a person.

(d) All motorboats shall carry the minimum number of United States coast guard approved hand portable fire extinguishers, the number of which is to be determined by the Montana fish and game commission or a United States coast guard approved fixed fire extinguishing system, except, that motorboats less than twenty-six (26) feet in length of entirely open construction, propelled by outboard motors, and not carrying passengers for hire need not carry such portable fire extinguishers or fire extinguishing systems.



(2) Every motorboat or vessel shall have the carburetor or carburetors of every engine therein (except outboard motors) using gasoline as fuel, equipped with an efficient flame arrester, backfire trap, or other similar device.

(3) The board may adopt rules modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation and safety laws or with the navigation and safety rules promulgated by the United States coast guard.

(4) A person may not operate or give permission for the operation of a vessel which is not equipped as required by this section or modification thereof.

(5) A vessel may not be equipped in a manner which will permit discharge of inadequately treated sewage into waters of this state. No container of inadequately treated sewage may be placed, left or discharged in or near waters of this state by anyone at any time. All toilets located on any vessel operated on waters of this state shall have securely affixed to the interior discharge opening of them an operating treatment device or retaining tank meeting the standards established by the board of health and environmental sciences.

**History:** En. Sec. 5, Ch. 285, L. 1959; amd. Sec. 1, Ch. 138, L. 1961; amd. Sec. 2, Ch. 230, L. 1963; amd. Sec. 1, Ch. 169, L. 1965; amd. Sec. 52, Ch. 511, L. 1973; amd. Sec. 5, Ch. 514, L. 1973.

#### Compiler's Notes

This section was amended twice in 1973, once by Ch. 511 and once by Ch. 514. Neither amendatory act mentioned or incorporated the changes made by the other. The compiler has made a composite section embodying the changes made by both amendments. In so far as there may be a conflict with respect to the age specified in subdivision (1) (a), the compiler has used the language of Ch. 514, the later in date of approval.

#### Amendments

Chapter 511, Laws of 1973, substituted "under the age of thirteen (13) years" in subdivision (1) (a) for "twelve (12) years of age or younger"; redesignated former subdivisions (1) (e), (1) (f), (1) (g) and (2) as (2), (3), (4) and (5) respectively; substituted "board of health and environmental sciences" for "state board of

health" at the end of subsection (5); and made minor changes in style and phraseology.

Chapter 514, Laws of 1973, inserted "motorboat or" in the preliminary clause of subsection (1); substituted "United States coast guard approved personal flotation device" near the beginning of subdivision (1) (a) for "life preserver, buoyant vest, ring-buoy or buoyant cushion of the type approved by the commandant of the United States coast guard"; substituted "who has not reached his twelfth birthday" in subdivision (1) (a) for "twelve (12) years of age or younger"; added the second sentence to subdivision (1) (a); completely rewrote subdivision (1) (b), for text of which see parent volume; inserted "prescribed by the board" after "ventilation system" in subdivision (1) (c); inserted "be used and" before "be capable of removing" in subdivision (1) (c); inserted "entirely" before "open construction" in subdivision (1) (d); inserted "or safety" after "navigation" in two places near the end of subdivision (1) (f); and made minor changes in style and phraseology.

**69-3506. Exemption from numbering provisions of this act.** A motorboat shall not be required to be numbered under this act, if it is:

(1) Already covered by a number in full force and effect which has been awarded to it pursuant to federal law or a federally approved numbering system of another state; provided, that such vessel shall not have been within this state for a period in excess of sixty (60) consecutive days. After sixty (60) consecutive days within this state, this state becomes the



motorboat's state of principal use and the owner must apply for a Montana number, certificate of number and license decal.

(2) A motorboat from a country other than the United States temporarily using the waters of this state.

(3) A motorboat whose owner is the United States, a state or subdivision thereof.

(4). \* \* \* [Same as parent volume.]

**History:** En. Sec. 6, Ch. 285, L. 1959; amd. Sec. 6, Ch. 514, L. 1973.

#### Amendments

The 1973 amendment deleted "or vessel" following "motorboat" in the preliminary clause; reduced the period dur-

ing which a motorboat from another state may be used without obtaining a Montana certificate of number from 90 to 60 days; added the second sentence to subdivision (1); and substituted "motorboat" for "vessel" near the beginning of subdivisions (2) and (3).

**69-3508. Prohibited operation and mooring—enforcement.** (a) No person shall operate or knowingly permit any person to operate, any motorboat or vessel, or manipulate any water-skis, surfboard, or similar device, or other contrivance, in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(b) No person shall operate, or knowingly permit any person to operate, any motorboat or vessel, or manipulate any water-skis, surfboard, or similar device, or other contrivance, while intoxicated or under the influence of any narcotic drug, barbiturate or marijuana.

(c) and (d). \* \* \* [Same as parent volume.]

(e) No person shall make reckless approach to, departure from or passage by a dock, ramp, diving board or float.

(f). \* \* \* [Same as parent volume.]

(g) No person shall moor a vessel to any of the buoys or beacons placed in any waters of this state by the authority of the United States, an agency of the United States or the board nor in any manner hang on with a vessel to such buoy or beacon, except in the act of maintenance work on such buoy or beacon, nor shall any person deface, remove or destroy any such buoy, beacon or other authorized navigational marker maintained in the waters of this state.

(h) If an officer whose duty it is to enforce the sections of this law observes a vessel being used without sufficient lifesaving or firefighting devices or in an overloaded or other unsafe condition and in his judgment, such use creates an especially hazardous condition, he may direct the operator to take whatever immediate and reasonable steps would be necessary for the safety of those aboard the vessel, including directing the operator to return to mooring or launching site and to remain there until the situation creating the hazard is corrected or ended.

**History:** En. Sec. 8, Ch. 285, L. 1959; amd. Sec. 7, Ch. 514, L. 1973.

contrivance" in subsections (a) and (b); inserted "departure from" in subsection (e); and added subsections (g) and (h).

#### Amendments

The 1973 amendment inserted "or other

**69-3508.1. Discharge of waste from vessel prohibited.** No person shall discharge or cause, permit or suffer to be discharged, any garbage, refuse,

waste or sewage from any vessel into or upon the waters of any stream, river or lake within the boundaries of the state of Montana.

History: En. Sec. 2, Ch. 169, L. 1965; Amendments  
amd. Sec. 8, Ch. 514, L. 1973.

The 1973 amendment substituted "vessel" for "boat."

**69-3508.2. Penalty for discharge of waste from vessel.** A person who is convicted of a violation of section 69-3508.1 shall be punished by a fine of not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).

History: En. Sec. 3, Ch. 169, L. 1965;  
amd. Sec. 9, Ch. 514, L. 1973.

**Amendments**

The 1973 amendment substituted "sec-

tion 69-3508.1" for "this act"; and substituted "not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100)" for "not more than twenty-five dollars (\$25)."

**69-3510. Restricted areas.** (a) and (b). \* \* \* [Same as parent volume.]

(c) Swimming areas shall be marked with white buoys having international orange markings in conformance with the uniform state waterway marking system by the owners of such areas.

(d) No person, without permission, or unless unavoidable shall operate or knowingly permit any person to operate a vessel within fifty (50) feet of a person engaged in fishing.

History: En. Sec. 10, Ch. 285, L. 1959;  
amd. Sec. 10, Ch. 514, L. 1973.

**Amendments**

The 1973 amendment changed the coloring for buoys marking swimming areas in

subsection (c) from yellow and red colored buoys to white buoys with international orange markings; increased the distance specified in subsection (d) from 20 to 50 feet; and made a minor change in style.

**69-3512. Collisions, accidents and casualties.** (a). \* \* \* [Same as parent volume.]

(b) The board shall prepare and distribute to each sheriff's office and state game wardens of this state, a standardized accident report form; any person involved in a collision, accident or other casualty involving a death, disappearance, personal injury or property damage in excess of one hundred dollars (\$100.00) shall immediately report such collision, accident or other casualty to the sheriff's office or state game warden of the county in which the collision, accident or casualty occurred and fill out a standardized accident report form.

(c). \* \* \* [Same as parent volume.]

History: En. Sec. 12, Ch. 285, L. 1959;  
amd. Sec. 11, Ch. 514, L. 1973.

**Amendments**

The 1973 amendment inserted references

to state game wardens in two places in subsection (b); and inserted "disappearance" following "casualty involving a death" in the middle of subsection (b).

**69-3514. Water-skis and surfboards.** (a) No person shall operate a motorboat or vessel on any waters of this state for the purpose of towing a person or persons on water-skis, a surfboard, or similar device or other contrivance unless said operator is at least twelve (12) years of age, and further providing that there is a second person, at least twelve (12) years

of age, in the vessel to act as observer to observe the person being towed, nor shall any person engage in water-skiing, surfboarding, or similar activity, or towing some other contrivances at any time between the hours from one hour after sunset to one hour before sunrise; provided, however, that the provisions of this subsection do not apply to a performer engaged in a professional exhibition or a person or persons engaged in a regatta or race authorized under this act.

(b). \* \* \* [Same as parent volume.]

**History:** En. Sec. 14, Ch. 285, L. 1959; amd. Sec. 12, Ch. 514, L. 1973.

#### Amendments

The 1973 amendment inserted "motorboat or" near the beginning of subsection

(a); inserted "for the purpose of" before "towing a person" in subsection (a); inserted references to "other contrivances" in two places; and inserted the age requirement for the operator, and the requirement for an observer.

**69-3516.1. Education program.** The board shall co-ordinate a state-wide boat safety education program.

**History:** En. Sec. 13, Ch. 514, L. 1973.

#### Title of Act

An act to amend sections 69-3502, 69-3503, 69-3504, 69-3504.1, 69-3505, 69-3506, 69-3508, 69-3508.1, 69-3508.2, 69-3510, 69-3512, 69-3514, 69-3517, and 69-3518, R. C. M. 1947, all relating to the operation, oc-

cupancy, licensing and certification of motorboats and other vessels; providing for disposition of funds from licensing and fines arising from motorboat operation; providing for protection of navigational markers; prescribing penalties for violation; and providing an effective date.

**69-3517. Enforcement of act.** It shall be the duty of the fish and game commission to enforce the sections of this law. The state fish and game director shall employ all the necessary personnel to comply with this section. All sheriffs and peace officers of the state of Montana and all United States coast guard law enforcement officers shall have authority to enforce provisions of sections 69-3501 through 69-3518.

**History:** En. Sec. 17, Ch. 285, L. 1959; amd. Sec. 2, Ch. 336, L. 1969; amd. Sec. 14, Ch. 514, L. 1973.

#### Amendments

The 1973 amendment inserted "and all United States coast guard law enforcement officers" near the end of the third sentence.

**69-3518. Penalty.** Violations of any section of this act unless otherwise specified shall be a misdemeanor and be punishable by fine of not less than fifteen dollars (\$15) or more than five hundred dollars (\$500.00) or by imprisonment up to six (6) months, or by both such fine and imprisonment. All fine and bond forfeitures shall be transmitted to the state treasurer who shall deposit such fines and forfeitures in the motorboat account of an earmarked fund; the moneys shall be used only by the fish and game commission for enforcement of sections 69-3501 through 69-3518.

**History:** En. Sec. 18, Ch. 285, L. 1959; amd. Sec. 15, Ch. 514, L. 1973.

to six months; and added the second sentence.

#### Amendments

The 1973 amendment inserted "unless otherwise specified" near the beginning of the first sentence; increased the minimum fine from \$10.00 to \$15.00; increased the maximum imprisonment from 30 days

#### Effective Date

Section 16 of Ch. 514, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved April 4, 1973.



## CHAPTER 36—AMBULANCE SERVICE

## Section

- 69-3604. Findings and purposes.
- 69-3605. Definitions.
- 69-3606. License required.
- 69-3607. Fee—term of license.
- 69-3608. Cancellation or denial of licenses—procedure.
- 69-3609. Rules and regulations—co-operative agreements.
- 69-3610. Inspections.
- 69-3611. Authority of board to issue subpoenas.
- 69-3612. Penalty.
- 69-3613. License fee—supersedes other fees.

**69-3604. Findings and purposes.** The public welfare requires the establishment of minimum uniform standards for the operation of ambulance services as defined in section 2 [69-3605] of this act, and the control, inspection, and regulation of persons engaged therein, in order to prevent or eliminate improper care that may endanger the health of the public. The regulation of establishments providing such service is in the interest of social well-being, and the health and safety of the state and all its people.

**History:** En. Sec. 1, Ch. 387, L. 1971.

standards and regulations for ambulance services as required by public interest.

**Title of Act**

An act to establish minimum uniform

**69-3605. Definitions.** Unless the context requires otherwise, in this act:

(1) "Ambulance" means a privately or publicly owned motor vehicle that is especially designed, constructed, and equipped, which is maintained and used for the transportation of patients, including dual purpose police patrol cars and funeral coaches or hearses which otherwise comply with this act, but does not include a motor vehicle owned by, or operated under the direct control of the United States or this state of Montana.

(2) "Ambulance service" means a person who operates an ambulance.

(3) "Attendant" means a trained or otherwise qualified individual responsible for the operation of an ambulance and the care of the patients whether or not the attendant also serves as driver.

(4) "Attendant-driver" means a person who is qualified as an attendant and a driver.

(5) "Driver" means an individual who drives an ambulance.

(6) "Dual purpose police patrol car" means a vehicle, operated by a police department, which is equipped as an ambulance, even though it is also used for patrol or other police purposes.

(7) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(8) "Board" means the board of health and environmental sciences, provided for in section 82A-605.

(9) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

(10) "Person" means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States or this state.

**History:** En. Sec. 2, Ch. 387, L. 1971; amd. Sec. 11, Ch. 349, L. 1974.

**Amendments**

The 1974 amendment substituted the definition of "Department" in subdivision (7) for "Executive officer" means the executive officer of the Montana state department of health or his designated of-

ficial"; substituted "board of health and environmental sciences, provided for in section 82A-605" for "board of health of the state of Montana" in subdivision (8); deleted a definition as follows: "License officer" means the executive officer of the Montana state department of health or his designated official"; and made minor changes in phraseology and punctuation.

**69-3606. License required.** (1) Every person conducting or operating an ambulance service shall procure a license issued by the department. A separate license shall be required for each establishment.

(2) Applications for a license shall be made in writing to the department on forms specified by the department.

(3) Licenses shall be granted as a matter of right, unless conditions exist as specified by this act which are grounds for a cancellation or denial of a license. The applicant may apply for a hearing and judicial review as specified by this act upon being denied a license or upon cancellation.

**History:** En. Sec. 3, Ch. 387, L. 1971.

**69-3607. Fee—term of license.** (1) There shall be paid to the department with each application for a license or for renewal of a license, an annual license fee of five dollars (\$5). The department shall deposit fees with the state treasurer to the credit of the state general fund.

(2) Each license shall expire on December 31 following its date of issue, unless cancelled for cause. Renewal may be obtained by paying the required annual license fee. The license shall not be transferable nor be applicable to any premises other than that for which originally issued.

**History:** En. Sec. 4, Ch. 387, L. 1971.

**69-3608. Cancellation or denial of licenses—procedure.** (1) The department may cancel a license if it finds that the licensee has violated provisions of or rules adopted under this act, and the licensee has failed or refused to remedy or correct the violation. Submission to the department of an acceptable plan of correction within ten (10) days after receipt from the department of written notice of violation, and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department, is a bar to prosecution for violation.

(2) The department may not deny or cancel a license without:

(a) Delivery to the applicant or licensee of a written statement of the grounds for the denial or cancellation or the charge involved;

(b) An opportunity to answer at a hearing before the board to show cause, if any, why the license should not be denied or canceled. In this case, the licensee shall make written request to the board for a hearing within ten (10) days after notice of the grounds or charges has been received. If the board finds that the violations of this act do not constitute a danger to the public health and would produce a hardship without equal or greater benefit to the public, the board may grant an exception to the licensee for a period not to exceed one (1) year, during which time a license may not be denied the licensee nor may his license be canceled. Subsequent exceptions

## CHAPTER 36—AMBULANCE SERVICE

## Section

- 69-3604. Findings and purposes.  
 69-3605. Definitions.  
 69-3606. License required.  
 69-3607. Fee—term of license.  
 69-3608. Cancellation or denial of licenses—procedure.  
 69-3609. Rules and regulations—co-operative agreements.  
 69-3610. Inspections.  
 69-3611. Authority of board to issue subpoenas.  
 69-3612. Penalty.  
 69-3613. License fee—supersedes other fees.

**69-3604. Findings and purposes.** The public welfare requires the establishment of minimum uniform standards for the operation of ambulance services as defined in section 2 [69-3605] of this act, and the control, inspection, and regulation of persons engaged therein, in order to prevent or eliminate improper care that may endanger the health of the public. The regulation of establishments providing such service is in the interest of social well-being, and the health and safety of the state and all its people.

**History:** En. Sec. 1, Ch. 387, L. 1971.

standards and regulations for ambulance services as required by public interest.

**Title of Act**

An act to establish minimum uniform

**69-3605. Definitions.** Unless the context requires otherwise, in this act:

(1) "Ambulance" means a privately or publicly owned motor vehicle that is especially designed, constructed, and equipped, which is maintained and used for the transportation of patients, including dual purpose police patrol cars and funeral coaches or hearses which otherwise comply with this act, but does not include a motor vehicle owned by, or operated under the direct control of the United States or this state of Montana.

(2) "Ambulance service" means a person who operates an ambulance.

(3) "Attendant" means a trained or otherwise qualified individual responsible for the operation of an ambulance and the care of the patients whether or not the attendant also serves as driver.

(4) "Attendant-driver" means a person who is qualified as an attendant and a driver.

(5) "Driver" means an individual who drives an ambulance.

(6) "Dual purpose police patrol car" means a vehicle, operated by a police department, which is equipped as an ambulance, even though it is also used for patrol or other police purposes.

(7) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(8) "Board" means the board of health and environmental sciences, provided for in section 82A-605.

(9) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

(10) "Person" means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States or this state.



**History:** En. Sec. 2, Ch. 387, L. 1971; amd. Sec. 11, Ch. 349, L. 1974.

**Amendments**

The 1974 amendment substituted the definition of "Department" in subdivision (7) for "Executive officer" means the executive officer of the Montana state department of health or his designated of-

ficial"; substituted "board of health and environmental sciences, provided for in section 82A-605" for "board of health of the state of Montana" in subdivision (8); deleted a definition as follows: "License officer" means the executive officer of the Montana state department of health or his designated official"; and made minor changes in phraseology and punctuation.

**69-3606. License required.** (1) Every person conducting or operating an ambulance service shall procure a license issued by the department. A separate license shall be required for each establishment.

(2) Applications for a license shall be made in writing to the department on forms specified by the department.

(3) Licenses shall be granted as a matter of right, unless conditions exist as specified by this act which are grounds for a cancellation or denial of a license. The applicant may apply for a hearing and judicial review as specified by this act upon being denied a license or upon cancellation.

**History:** En. Sec. 3, Ch. 387, L. 1971.

**69-3607. Fee—term of license.** (1) There shall be paid to the department with each application for a license or for renewal of a license, an annual license fee of five dollars (\$5). The department shall deposit fees with the state treasurer to the credit of the state general fund.

(2) Each license shall expire on December 31 following its date of issue, unless cancelled for cause. Renewal may be obtained by paying the required annual license fee. The license shall not be transferable nor be applicable to any premises other than that for which originally issued.

**History:** En. Sec. 4, Ch. 387, L. 1971.

**69-3608. Cancellation or denial of licenses—procedure.** (1) The department may cancel a license if it finds that the licensee has violated provisions of or rules adopted under this act, and the licensee has failed or refused to remedy or correct the violation. Submission to the department of an acceptable plan of correction within ten (10) days after receipt from the department of written notice of violation, and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department, is a bar to prosecution for violation.

(2) The department may not deny or cancel a license without:

(a) Delivery to the applicant or licensee of a written statement of the grounds for the denial or cancellation or the charge involved;

(b) An opportunity to answer at a hearing before the board to show cause, if any, why the license should not be denied or canceled. In this case, the licensee shall make written request to the board for a hearing within ten (10) days after notice of the grounds or charges has been received. If the board finds that the violations of this act do not constitute a danger to the public health and would produce a hardship without equal or greater benefit to the public, the board may grant an exception to the licensee for a period not to exceed one (1) year, during which time a license may not be denied the licensee nor may his license be canceled. Subsequent exceptions

may be granted the licensee, each for a period not to exceed one (1) year, and each after a hearing before the board.

(3) On cancellation of a license, the license certificate shall be returned to the department for destruction or deletion as the department may direct in its notice of cancellation.

(4) When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this act, or the rules adopted under this act.

**History:** En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment substituted references to "department" for references to "executive officer" in subsections (1) and (2); substituted "rules adopted under this

act" for "regulations of this act" in the first sentence of subsection (1) and at the end of subsection (4); deleted a provision pertaining to review of orders made by the executive officer in the district court of the county in which the licensed premises are located; and made minor changes in phraseology and punctuation.

**69-3609. Rules and regulations — co-operative agreements.** (1) The department shall prescribe and enforce rules and regulations which are necessary to carry out the provisions of this act. These rules and regulations shall relate to ambulance equipment, training, operations (records), personnel, cleanliness, and insurance.

(2) No rules or regulations shall be effective until a public hearing has been held for review of the rules and regulations. Notice of the public hearing shall be sent by ordinary mail at least thirty (30) days before the hearing to all Montana licensed operators along with a copy of the proposed regulations.

(3) The department may enter into co-operative agreements with any of the state agencies or political subdivisions for the purpose of carrying out the provisions of this act, or any part thereof.

(4) Pursuant to the provisions of this act, required equipment in an ambulance which is maintained and regularly used for the transportation of patients shall consist of the minimal equipment for ambulances as adopted by the American college of surgeons, March, 1967, and required training shall be set at a level of advanced American Red Cross first aid or its equivalent. Nothing in this section shall preclude the use of any vehicle for the transportation of the injured in instances of emergency, need, or disaster situations, and the department shall not prescribe and enforce any rules and regulations related to ambulance equipment and training which exceed these requirements.

**History:** En. Sec. 6, Ch. 387, L. 1971; amd. Sec. 107, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "board" in the first sentence of subsection (1) and in subsection (4).

**69-3610. Inspections.** (1) The department shall make necessary investigations and inspections for enforcement of this act. The department shall make regular inspections as the rules of the department may direct, and special inspections which the department may consider necessary.

(2) The department has free access at all reasonable hours to the establishments listed and defined in section 69-3605, to make inspections.

**History:** En. Sec. 7, Ch. 387, L. 1971; amd. Sec. 13, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment rewrote the second sentence of subsection (1) which read: "Each authorized representative shall make regular inspections as the rules and regulations of the board may direct, and such special inspections as the department may

from time to time direct, and he shall make such reports relative to the conditions existing at such times and in such manner as the board may direct"; substituted "The department has" for "All persons authorized by this act or by regulations adopted under this act shall" at the beginning of subsection (2); and made minor changes in phraseology and punctuation.

**69-3611. Authority of board to issue subpoenas.** In any proceeding under this act, the board may administer oaths and issue subpoenas, summon witnesses, and take testimony of any person within the state of Montana.

**History:** En. Sec. 8, Ch. 387, L. 1971.

**69-3612. Penalty.** Any person violating any provision of this act or regulation made hereunder shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) for the first offense, and not less than seventy-five dollars (\$75) nor more than two hundred dollars (\$200) for the second offense; and for third and subsequent offenses, by a fine of not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500) or imprisonment in the county jail not to exceed ninety (90) days.

**History:** En. Sec. 9, Ch. 387, L. 1971.

**69-3613. License fee—supersedes other fees.** Payment of the license fee stipulated in this act shall be accepted in lieu of any and all existing state fees and charges for like purposes or intent which may be existent prior to the adoption of this act.

**History:** En. Sec. 10, Ch. 387, L. 1971.

#### Separability Clause

Section 11 of Ch. 387, Laws 1971 read "Severability. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid

in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

#### Effective Date

Section 12 of Ch. 387, Laws 1971 read "Effective date. This act is effective January 1, 1972."

### CHAPTER 39—AIR POLLUTION

#### Section

- 69-3906. Definitions.
- 69-3907. Administration.
- 69-3908. Air pollution control advisory council—meetings—minutes—duties.
- 69-3909. Powers of board.
- 69-3909.1. Powers of department.
- 69-3912. Inspections.
- 69-3914. Enforcement.
- 69-3915. Emergency procedure.
- 69-3918. Confidentiality of records.
- 69-3919. Local air pollution control programs.
- 69-3921. Penalties.
- 69-3923. Classification of property for taxation.

**69-3906. Definitions.** Unless the context requires otherwise, in this act: (1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.



(2) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in a quantity and for a duration which is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

(3) "Emission" means a release into the outdoor atmosphere of air contaminants.

(4) "Person" means an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or any other legal entity.

(5) "Advisory council" means the air pollution control advisory council provided for in section 82A-606.

(6) "Board" means the board of health and environmental sciences, provided for in section 82A-605.

(7) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

History: En. Sec. 3, Ch. 313, L. 1967;  
amd. Sec. 13, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment substituted "provided for in section 82A-606" for "created by this act" at the end of subdivision (5); deleted a definition as follows: "Director"

means the director of air pollution control, a position created by this act"; substituted "board of health and environmental sciences, provided for in section 82A-605" for "state board of health" in subdivision (6); added the definition of "department" in subdivision (7); and made minor changes in phraseology and punctuation.

**69-3907. Administration.** The department is responsible for the administration of this act.

History: En. Sec. 4, Ch. 313, L. 1967;  
amd. Sec. 15, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment substituted "de-

partment" for "state board of health" and deleted provisions pertaining to the appointment, qualifications, salary and powers and duties of the director of air pollution.

**69-3908. Air pollution control advisory council—meetings—minutes—duties.** (1) A chairman shall be elected by the advisory council from among its number.

(2) The advisory council shall hold at least two (2) regular meetings each calendar year and shall keep a summary record of its proceedings which shall be open to the public for inspection. Special meetings may be called by the chairman and must be called by him on receipt of a written request signed by two (2) or more members of the advisory council. Notice of the time and place for meetings shall be given in advance to each member of the advisory council by the secretary.

(3) The secretary of the advisory council shall be a member of the staff of the department, designated by the director of health and environmental sciences. The secretary shall keep all records of meetings of, and actions taken by, the council. He shall keep the advisory council advised as to actions taken by persons in response to recommendations and orders issued under this act and shall perform other duties as determined by the advisory council, not inconsistent with rules and policies adopted under this act or specific authority otherwise given the advisory council.

(4) The advisory council shall act in an advisory capacity to the department on matters relating to air pollution.

**History:** En. Sec. 5, Ch. 313, L. 1967; amd. Sec. 16, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment rewrote this section to delete provisions pertaining to the appointment, qualifications, terms, and compensation of the members of the advisory council; substituted "department" for "state board of health" and "director of health and environmental sciences" for "executive officer of the board" in sub-

section (3); substituted the provision of subsection (4) for "The advisory council may consider standards, rules, and regulations as provided in section 69-3913 and any other matter related to the purposes of the act, which may be submitted to it by the board. It may make recommendations to the board on its own initiative concerning the administration of this act"; and made changes in phraseology and punctuation.

#### 69-3909. Powers of board. The board shall:

(1) Adopt, amend, and repeal rules implementing and consistent with this act.

(2) Hold hearings relating to any aspect of or matter in the administration of this act, at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost.

(3) Issue orders necessary to effectuate the purposes of this act.

(4) By rule require access to records relating to emissions.

(5) Establish ambient air quality standards for the state.

**History:** En. Sec. 6, Ch. 313, L. 1967; amd. Sec. 17, Ch. 349, L. 1974.

cer in subdivision (2); inserted "By rule" at the beginning of subdivision (4); deleted a listing of powers now assigned to the department by section 69-3909.1; and made changes in phraseology and punctuation.

#### Amendments

The 1974 amendment deleted references to the director and provisions pertaining to his powers and duties as a hearing offi-

#### 69-3909.1. Powers of department. The department shall:

(1) Enforce orders issued by the board by appropriate administrative and judicial proceedings;

(2) Secure necessary scientific, technical, administrative, and operational service, including laboratory facilities, by contract or otherwise;

(3) Prepare and develop a comprehensive plan for the prevention, abatement, and control of air pollution in this state;

(4) Encourage voluntary co-operation by persons and affected groups to achieve the purposes of this act;

(5) Encourage local units of government to handle air pollution problems within their respective jurisdictions on a co-operative basis, and provide technical and consultative assistance for this. If local programs are financed with public funds, the department may contract with the local government to share the cost of the program. However, the state share may not exceed thirty per cent (30%) of the total cost.

(6) Encourage and conduct studies, investigations, and research relating to air contamination and air pollution and their causes, effects, prevention, abatement, and control;

(7) Determine by means of field studies and sampling the degree of air contamination and air pollution in the state;

(8) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state, and make recommendations to appropriate public and private bodies with respect to this.

(9) Collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution;

(10) Advise, consult, contract, and co-operate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups;

(11) Consult, on request, with any person proposing to construct, install or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of this device or system, or the air pollution problems which may be related to the source, device, or system. Nothing in this consultation relieves a person from compliance with this act, rules in force under it, or any other provision of law.

(12) Accept, receive, and administer grants or other funds or gifts from public or private agencies including the United States, for the purpose of carrying out this act. Funds received under this section shall be deposited in the state treasury to the account of the department.

**History:** En. 69-3909.1 by Sec. 18, Ch. 349, L. 1974.

**69-3912. Inspections.** (1) The department may enter and inspect, at any reasonable time, any property, premises, or place, except a private residence, on or at which an air contaminant source is located or is being constructed or installed for the purpose of ascertaining the state of compliance with this act and rules in force under it.

(2) A person may not refuse entry or access to an authorized representative of the department when it requests entry for purposes of inspection, and who presents appropriate credentials. A person may not obstruct, hamper, or interfere with an inspection.

(3) At his request, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

**History:** En. Sec. 9, Ch. 313, L. 1967; amd. Sec. 19, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment substituted "The department" for "Any duly authorized

officer, employee, or representative of the board" at the beginning of subsection (1); substituted "department" for "board" in the first sentence of subsection (2); and made minor changes in phraseology and punctuation.

**69-3914. Enforcement.** (1) When the department has reason to believe that a violation of this act or a rule made under it has occurred, it may cause written notice to be served on the alleged violator. The notice shall specify the provision of this act or rule alleged to be violated, and the facts alleged to constitute a violation, and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, no later than thirty (30) days after the date the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall hold a hearing.

(2) If, after a hearing held under subsection (1) of this section, the board finds that violations have occurred, it shall either affirm or modify an order previously issued, or issue an appropriate order for the prevention,



abatement, or control of the emissions involved or for the taking of other corrective action it considers appropriate. If, after hearing on an order contained in a notice the board finds that no violation is occurring, it shall rescind the order. An order issued as part of a notice or after hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the emissions.

(3) Instead of issuing the order provided for in subsection (1) of this section, the department may either:

(a) Require that the alleged violators appear before the board for a hearing at a time and place specified in the notice, and answer the charges complained of; or

(b) Initiate action under section 69-3921.

(4) This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(5) In connection with a hearing held under this section, the board may, and on application by a party shall, compel the attendance of witnesses and the production of evidence on behalf of the parties.

**History:** En. Sec. 11, Ch. 313, L. 1967;  
amd. Sec. 20, Ch. 349, L. 1974.

tence of subsection (1) and near the beginning of subsection (3); inserted "or department" after "board" in subsection (4); and made minor changes in phraseology and punctuation.

#### Amendments

The 1974 amendment substituted "department" for "board" in the first sen-

**69-3915. Emergency procedure.** (1) Any other law to the contrary notwithstanding, if the department finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the department shall order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants. Upon issuance of this order, the department shall fix a place and time, not later than twenty-four (24) hours thereafter, for a hearing to be held before the board. Not more than twenty-four (24) hours after the commencement of the hearing, and without adjournment, the board shall affirm, modify, or set aside the order of the department.

(2) In the absence of a generalized condition such as that referred to in subsection (1) of this section, if the department finds that emissions from the operation of one (1) or more air contaminant sources is causing imminent danger to human health or safety, it may order the person or persons responsible for the operation or operations in question to reduce or discontinue emissions immediately, without regard for section 69-3914. In this event, the requirements for hearing, and affirmance, modification, or setting aside of orders set forth in subsection (1) of this section apply.

(3) This section does not limit any power which the governor or any other officer may have to declare an emergency and act on the basis of this declaration, whether the power is conferred by statute, constitutional provisions, or inheres in the office.

History: En. Sec. 12, Ch. 313, L. 1967; amd. Sec. 21, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment substituted refer-

ences to "department" for references to "director" in subsections (1) and (2) and made minor changes in phraseology and punctuation.

**69-3918. Confidentiality of records.** (1) Records or other information concerning air contaminant sources which are furnished to or obtained by the board or department, and which, as certified by the owner or operator, relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely his competitive position, are only for the confidential use of the board or department in the administration of this act, unless the owner expressly agrees to their publication or availability to the general public.

(2) This section does not prevent the use of records or information by the board or department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere, if the analyses or summaries do not identify an owner or operator or reveal information made otherwise confidential by this section.

History: En. Sec. 15, Ch. 313, L. 1967; amd. Sec. 22, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment inserted "or de-

partment" after "board" in subsections (1) and (2) and made minor changes in phraseology and punctuation.

**69-3919. Local air pollution control programs.** (1) A municipality or county may establish a local air pollution control program on being petitioned by fifteen per cent (15%) of the qualified electors in its jurisdiction, and may thereafter administer in its jurisdiction the air pollution control program which:

(a) Provides by ordinance or local law for requirements compatible with, more stringent, or more extensive than those imposed by sections 69-3913, 69-3915 and 69-3916 and rules issued under these sections;

(b) Provides for the enforcement of these requirements by appropriate administrative and judicial process;

(c) Provides for administrative organization, staff, financial, and other resources necessary to effectively and efficiently carry out its program; and

(d) If the program is consistent with this act and is approved by the board after a public hearing conducted under section 69-3909.

(2) If the board finds that the location, character, or extent of particular concentrations of population, air contaminant sources, or geographic, topographic, or meteorological considerations, or any combination of these are such as to make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the board may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

(3) If the board has reason to believe that an air pollution control program in force under this section is inadequate to prevent and control air pollution in the jurisdiction to which the program relates, or that the program is being administered in a manner inconsistent with this act, the board shall, on notice, conduct a hearing on the matter.

(4) If, after the hearing, the board determines that the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates, or that it is not accomplishing the purposes of this act, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed sixty (60) days.

(5) If the jurisdiction fails to take these measures within the time required, the department shall administer within such jurisdiction all of the provisions of this act. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the program shall be a charge on the municipality or county.

(6) If the board finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may direct the department to assume and retain control over that class of air contaminant source. No charge may be assessed against the jurisdiction therefor. Findings made under this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(7) A jurisdiction in which the department administers its air pollution control program under subsection (5) of this section may with the approval of the board establish or resume an air pollution control program which meets the requirements of subsection (1) of this section.

(8) A municipality or county may administer all or part of its air pollution control program in co-operation with one (1) or more municipalities or counties of this state or of other states.

History: En. Sec. 16, Ch. 313, L. 1967;  
amd. Sec. 23, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment substituted references to "department" for references to "board" in subsections (5) and (7); inserted "direct the department to" after

"it may" in the first sentence of subsection (6); deleted a provision pertaining to the continuing jurisdiction of local air pollution control programs in operation on the effective date of the 1967 act; and made minor changes in phraseology and punctuation.

**69-3921. Penalties.** (1) A person who violates this act, or a rule or order made under it, other than section 69-3918, is guilty of an offense and subject to a fine not to exceed one thousand dollars (\$1000). Each day of violation constitutes a separate offense.

(2) A person who willfully violates section 69-3918 is guilty of an offense and subject to a fine not to exceed one thousand dollars (\$1000).

(3) Action under subsections (1) or (2) of this section are not a bar to enforcement of this act, or of rules or orders made under it, by injunction or other appropriate remedy. The department may institute and maintain in the name of the state any enforcement proceedings.

(4) This act does not abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damage or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.

(5) Fines collected shall be deposited to the state general fund.



History: En. Sec. 18, Ch. 313, L. 1967;  
amd. Sec. 24, Ch. 349, L. 1974.

partment" for "board" in the second sentence of subsection (3) and made minor changes in phraseology and punctuation.

#### Amendments

The 1974 amendment substituted "de-

**69-3923. Classification of property for taxation.** (1) Facilities, machinery, or equipment, attached or unattached to real property, utilized to reduce, eliminate, control, or prevent air pollution, shall be classified as Class Seven (7) for the purpose of taxation under section 84-301.

(2) The decision, whether the facilities, machinery, or equipment are utilized to reduce, eliminate, control, or prevent air pollution, shall be made by the department and approved by the state board of equalization.

History: En. Sec. 20, Ch. 313, L. 1967;  
amd. Sec. 25, Ch. 349, L. 1974.

partment of revenue" for "board of equalization" at the end of subsection (2).

#### Amendments

The 1973 amendment substituted "de-

The 1974 amendment substituted "department" for "director" in subsection (2) and made minor changes in phraseology and punctuation.

### CHAPTER 40—REFUSE DISPOSAL AREAS

#### Section

69-4002. Definitions.

69-4010. Section preserved.

**69-4002. Definitions.** Unless the context requires otherwise, in this chapter: (1) "Garbage" means putrescible animal and vegetable wastes resulting from handling, preparation, cooking, and consumption of food.

(2) "Refuse" means putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yards clippings, and solid market and solid industrial wastes.

(3) "Rubbish" means nonputrescible solid wastes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, abandoned automobiles, tin cans, wood, glass, bedding, crockery, and similar materials.

(4) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(5) "Board" means the board of health and environmental sciences, provided for in section 82A-605.

History: En. Sec. 2, Ch. 35, L. 1965;  
amd. Sec. 26, Ch. 349, L. 1974.

tions of "Department" and "Board" in subdivisions (4) and (5), and made minor changes in phraseology and punctuation.

#### Amendments

The 1974 amendment added the defini-

### 69-4004. License required.

#### Compiler's Notes

Section 109, Ch. 349, Laws 1974, substi-

tuted "department" in this section for "state department of health."

### 69-4005. State department of health to approve disposal area.

#### Compiler's Notes

Section 109, Ch. 349, Laws 1974 sub-

stituted "department" in this section for "state department of health."

### 69-4007. Rules and regulations—inspections and recommendations.

#### Compiler's Notes

Section 109, Ch. 349, Laws 1974, substi-

tuted "department" throughout this section for "state department of health."

**69-4009. Penalty for violations.****Compiler's Notes**

Section 109, Ch. 349, Laws 1974, substituted

“department” in this section for “state department of health.”

**69-4010. Section preserved.** Section 94-3542 [69-4518] is not affected by this act.

**History:** En. Sec. 10, Ch. 35, L. 1965; amd. Sec. 27, Ch. 349, L. 1974.

**Compiler's Notes**

The compiler inserted the bracketed reference to section 69-4518. Section 94-3542 was repealed by Sec. 32, Ch. 513, Laws of 1973.

**Amendments**

The 1974 amendment rewrote this section which read: “All acts and parts of acts in conflict herewith are hereby repealed, except that section 32-1014 and section 94-3542 R. C. M. 1947, shall in no may be affected by this act.”

## CHAPTER 41—BOARD AND DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES—POWERS AND DUTIES

**Section**

69-4102. Definitions.

69-4104. Board—officers—meetings.

69-4106. Functions, powers and duties of board.

69-4110. Functions, powers, and duties of department.

69-4111. Legal adviser to board and department.

69-4112. Quarantine measures—adoption and enforcement.

69-4117. Schoolhouses—rules for lighting, heating, ventilation, and sanitary arrangements.

69-4118. Sanitary inspections of schoolhouses, churches, jails and other facilities for assemblages of persons.

**69-4101. Repealed.****Repeal**

Section 69-4101 (Sec. 1, Ch. 197, L. 1967), relating to establishment of the

state department of health, was repealed by Sec. 113, Ch. 349, Laws of 1974.

**69-4102. Definitions.** Unless the context indicates otherwise, in sections 69-4101 through 69-5816:

(1) “State board” or “board” means the board of health and environmental sciences, provided for in section 82A-605;

(2) “Department” means the department of health and environmental sciences, provided for in Title 82A, chapter 6;

(3) “Communicable disease” means a disease designated communicable by the board.

**History:** En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974.

**Amendments**

The 1974 amendment substituted “sections 69-4101 through 69-5816” for “sections 69-4101 to 69-5701” in the introduction; substituted “board of health and environmental sciences, provided for in

section 82A-605” for “state board of health” in subdivision (1); substituted “department of health and environmental sciences, provided for in Title 82A, chapter 6” for “state department of health” in subdivision (2); deleted a definition of “Executive officer”; and made changes in phraseology and punctuation.

**69-4103. Repealed.****Repeal**

Section 69-4103 (Sec. 3, Ch. 197, L. 1967; Sec. 1, Ch. 107, L. 1974), relating to the

membership of the state board of health, was repealed by Sec. 113, Ch. 349, Laws of 1974.

**69-4104. Board—officers—meetings.** (1) The board may adopt bylaws governing meetings. The director of health and environmental sciences shall serve as secretary to the board.

(2) The board shall meet once every two (2) months and may hold additional meetings on the call of the chair, at the request of the director of health and environmental sciences, or at the request of a majority of the members. If a member has three (3) unexcused absences from meetings in a calendar year, his position is vacant and the governor shall appoint a person to replace him.

(3) In suits or proceedings in which board actions are the subject of inquiry, meetings shall be considered to have been called and held unless the contrary is proven.

**History:** En. Sec. 4, Ch. 197, L. 1967; amd. Sec. 29, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment substituted references to "director of health and environmental sciences" for references to "executive officer" in subsections (1) and (2); deleted a sentence in subsection (1) which

read: "Four members constitute a quorum for the transaction of business"; deleted a provision for compensation of board members at the rate of twenty dollars a day and for reimbursement of expenses when attending meetings or in the discharge of other duties; and made minor changes in phraseology and punctuation.

### 69-4105. Repealed.

#### Repeal

Section 69-4105 (Sec. 5, Ch. 197, L. 1967), relating to administration of laws on

public health subjects by the department, was repealed by Sec. 113, Ch. 349, Laws of 1974.

### 69-4106. Functions, powers and duties of board. The board shall:

(1) Advise the department in public health matters;

(2) Hold hearings, administer oaths, subpoena witnesses, and take testimony in matters relating to the duties of the board.

**History:** En. Sec. 6, Ch. 197, L. 1967; amd. Sec. 28, Ch. 93, L. 1969; amd. Sec. 30, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "executive officer" in subdivision (1); substituted "duties of the

board" for "duties of the state board or the department" at the end of subdivision (2); deleted a subdivision which read "bring actions in court for enforcement of health laws and defend actions brought against the state board or department"; and made minor changes in phraseology, punctuation, and style.

### 69-4107 to 69-4109. Repealed.

#### Repeal

Sections 69-4107 to 69-4109 (Secs. 7 to 9, Ch. 197, L. 1967), relating to the ap-

pointment, removal, and powers and duties of the executive officer, were repealed by Sec. 113, Ch. 349, Laws of 1974.

**69-4110. Functions, powers, and duties of department. The department shall:**

(1) Study conditions affecting the citizens of the state by making use of birth, death, and sickness records;

(2) Make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(3) At the request of the governor, administer any federal health program for which responsibilities are delegated to states;



(4) Inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary, and at other times on request of the governor;

(5) After each inspection made under subsection (4) of this section, submit a written report on sanitary conditions to the governor and to the director of institutions or executive secretary of the Montana university system and include recommendations for improvement in conditions, if necessary;

(6) Advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(7) Organize laboratory services and provide equipment and personnel for those services;

(8) Develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(9) Develop and administer a program to protect the health of mothers and children;

(10) Conduct health education programs;

(11) Supervise school and local public health nurses in the performance of their duties;

(12) Consult with the superintendent of public instruction on health measures for schools;

(13) Develop and administer a program for services to handicapped children including diagnosis, medical, surgical and corrective treatment, and after-care and related services;

(14) Supervise local boards of health;

(15) Bring actions in court for the enforcement of the health laws and defend actions brought against the board or department; and

(16) Accept and expend federal funds available for public health services.

(17) Have the power to use personnel of local departments of health to assist in the administration of laws relating to public health.

**History:** En. Sec. 10, Ch. 197, L. 1967; amd. Sec. 31, Ch. 349, L. 1974.

division which read: "establish divisions, sections, or units which are necessary to carry out the responsibilities of the department"; added subdivision (17); and made minor changes in phraseology and punctuation.

#### **Amendments**

The 1974 amendment deleted "With policy guidance of the state board" at the beginning of the section; deleted a sub-

### **69-4110.1. Comprehensive state health planning powers, etc.**

#### **Compiler's Notes**

Section 109, Ch. 349, Laws 1974, substi-

tuted "department" throughout this section for "state department of health."

**69-4111. Legal adviser to board and department.** The attorney general is legal adviser to the board and department. If the county attorney fails to act, with the approval of the attorney general the department may retain special counsel and compensate him from appropriations to the department.

Either the county attorney of a county where a cause of action arises or the department may bring an action necessary to abate, restrain, or prosecute the violation of public health laws.

**History:** En. Sec. 11, Ch. 197, L. 1967; amd. Sec. 32, Ch. 349, L. 1974.      department" for "state board" in three places and made minor changes in phraseology and punctuation.

#### Amendments

The 1974 amendment substituted "de-

**69-4112. Quarantine measures—adoption and enforcement.** The department may adopt and enforce quarantine measures against a state, county, or municipality to prevent the spread of communicable disease. A person who does not comply with quarantine measures shall, on conviction, be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100). Receipts from fines shall be deposited in the state general fund.

**History:** En. Sec. 12, Ch. 197, L. 1967; amd. Sec. 33, Ch. 349, L. 1974.      proval of the state board" at the beginning of the section and made minor changes in phraseology and punctuation.

#### Amendments

The 1974 amendment deleted "With ap-

### 69-4113. Repealed.

#### Repeal

Section 69-4113 (Sec. 13, Ch. 197, L. 1967), relating to the authority of the ex-

ecutive officer to act for the board in emergency, was repealed by Sec. 113, Ch. 349, Laws of 1974.

### 69-4116. Repealed.

#### Repeal

Section 69-4116 (Sec. 16, Ch. 197, L. 1967), requiring administration of phenyl-

ketonuria tests to newborn infants, was repealed by Sec. 6, Ch. 227, Laws 1973. For new law, see secs. 69-6710 to 69-6713.

**69-4117. Schoolhouses—rules for lighting, heating, ventilation, and sanitary arrangements.** (1) The department shall adopt rules for lighting, heating, ventilation, plumbing, and sanitary arrangements for schoolhouses. Before a schoolhouse is constructed, plans must be submitted to the department for approval. A schoolhouse must conform to the rules adopted by the department before being used.

(2) Rules relating to building and equipment standards covered by the state or a municipal building code are effective after approval by the department of administration and filing with the secretary of state.

**History:** En. Sec. 17, Ch. 197, L. 1967; amd. Sec. 20, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 34, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "state board" in two places

in subsection (1); substituted "department of administration" for "state building code council" in subsection (2); and made minor changes in phraseology and punctuation. Section 12, Ch. 226, Laws of 1974, also directed substitution of "department of administration" for "state building code council" in this section.

**69-4118. Sanitary inspections of schoolhouses, churches, jails and other facilities for assemblages of persons.** (1) The department shall make sanitary inspections of schoolhouses, churches, theaters, jails and other buildings or facilities where persons assemble. If the facility is found unsanitary, the department shall direct that conditions be corrected

within a reasonable time. If the unsanitary conditions are not corrected within the time specified, the building or facility is a public nuisance.

(2) Either the department or a local board of health shall bring an action to correct the unsanitary conditions in the way provided by law for abating a public nuisance.

**History:** En. Sec. 18, Ch. 197, L. 1967; amd. [Sec. 1], Ch. 336, L. 1971; amd. Sec. 108, Ch. 349, L. 1974.

The 1974 amendment substituted "department" for "state board" in subsection (2).

#### Amendments

The 1971 amendment inserted "jails" in the first sentence of subsection (1).

### CHAPTER 42—OCCUPATIONAL HEALTH

#### Section

- 69-4206. Short title.
- 69-4207. Declaration of policy and purpose.
- 69-4208. Definitions.
- 69-4209. Administration.
- 69-4211. Powers of board.
- 69-4211.1. Powers of department.
- 69-4212. Permits.
- 69-4213. Inspection.
- 69-4214. Emissions prohibited.
- 69-4215. Enforcement.
- 69-4216. Emergency procedure.
- 69-4217. Variances.
- 69-4218. Hearings and judicial review.
- 69-4219. Confidentiality of records.
- 69-4220. Application for federal aid.
- 69-4221. Penalties.

#### 69-4201 to 69-4203. Repealed.

##### Repeal

Sections 69-4201 to 69-4203 (Secs. 19 to 21, Ch. 197, L. 1967), relating to duties and powers of the state department of

health with respect to occupational diseases, were repealed by Sec. 18, Ch. 316, Laws 1971. For present law, see section 69-4206 et seq.

#### 69-4205. Repealed.

##### Repeal

Section 69-4205 (Sec. 23, Ch. 197, L. 1967), providing a penalty, was repealed

by Sec. 18, Ch. 316, Laws 1971. For present law, see sec. 69-4221.

**69-4206. Short title.** This act shall be known and may be cited as the "Occupational Health Act of Montana."

**History:** En. Sec. 1, Ch. 316, L. 1971.

providing for prevention, abatement, and control of occupational diseases; providing penalties for violation; and repealing sections 69-4201, 69-4202, 69-4203, and 69-4205, R. C. M., 1947.

##### Title of Act

An act providing for the conservation of the health of workers of the state;

**69-4207. Declaration of policy and purpose.** (1) It is hereby declared to be the public policy of this state and the purpose of this act to achieve and maintain such conditions at the work place as will protect human health and safety, and to the greatest degree practicable, foster the comfort and convenience of the workers at any work place of this state and enhance their productivity and well-being.



(2) To these ends it is the purpose of this act to provide for a co-ordinated statewide program of abatement and control of occupational diseases, for an appropriate distribution of responsibilities among the state and local units of government, and to provide a framework within which all values may be balanced in the public interest.

**History:** En. Sec. 2, Ch. 316, L. 1971.

**69-4208. Definitions.** Unless the context requires otherwise, in this act:

(1) "Air contaminant" means fumes, dust, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(2) "Emission" means a release into the workspace atmosphere of air contaminants or pollutants.

(3) "Occupational disease" means an illness, impairment or disability that:

(a) Arises from the person's employment.

(b) Is caused by exposure to a substance or industrial practice which is hazardous to health.

(c) Has symptoms of an industrial disease which is known to have resulted from the same type of exposure in other cases.

(d) Is not the result of a person's contact or activities outside his employment.

(4) "Worker" is a person gainfully employed at any place.

(5) "Work place" is a place or location where a person is gainfully employed.

(6) "Occupational health" is a field of specialization concerned with the problems of health maintenance, productivity, and well-being of industrial workers which are related to and affected by the conditions of work and by the stress of the industrial environment.

(7) "Threshold limit values" means airborne concentrations of substances which it is believed that nearly all workers may be repeatedly exposed to day after day without adverse effect.

(8) "Pollutant" means air contaminants, heat, noise, vibration, ionizing radiation, and nonionizing radiation.

(9) "Sanitary facilities" means toilets, showers, dressing rooms, lunch rooms, sewage disposal systems, and potable water systems.

(10) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(11) "Board" means the board of health and environmental sciences, provided for in section 82A-605.

(12) "Person" means an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate or any other legal entity.

**History:** En. Sec. 3, Ch. 316, L. 1971; amd. Sec. 35, Ch. 349, L. 1974.

#### **Amendments**

The 1974 amendment substituted "department of health and environmental

sciences, provided for in Title 82A, chapter 6" for "Montana state department of health" in subdivision (10); substituted "board of health and environmental sciences, provided for in section 82A-605" for "Montana state board of health" in

subdivision (11); deleted definitions of "Advisory committee," "Director," and "Executive officer," and made minor changes in phraseology and punctuation.

**69-4209. Administration.** Except as otherwise provided, the department is responsible for administration of this act.

**History:** En. Sec. 4, Ch. 316, L. 1971; amd. Sec. 36, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment substituted the present section for one which read: "Except as otherwise provided, the department, acting under the guidance of the board as to matters of policy, is responsible for administration of the provisions of this act. The executive officer shall appoint a director of the occupational health program to perform the duties and powers

conferred upon the department by this act. The director shall meet requirements established by the board. The executive officer may delegate to any employee of the department such duties and functions as he deems necessary for the proper and efficient administration of this act, and the executive officer shall have the authority with the approval of the board and within the limitation of funds, to hire additional employees and to discharge same for cause."

### 69-4210. Repealed.

#### Repeal

Section 69-4210 (Sec. 5, Ch. 316, L. 1971), relating to the creation and membership

of the occupational health advisory committee, was repealed by Sec. 113, Ch. 349, Laws of 1974.

### 69-4211. Powers of board. The board shall:

(1) Adopt, amend, and repeal rules implementing and consistent with this act.

(2) Hold hearings relating to any aspect of or matter in the administration of this act, at any place designated by the board. The board may designate the director of health and environmental sciences as the hearing officer at any hearing set by the board and authorize him to make rulings on evidence and conduct the hearing. The board or the director of health and environmental sciences as hearing officer may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost.

(3) Issue orders necessary to carry out this act.

(4) Require access to records relating to emissions.

(5) Establish threshold limit values of airborne contaminants for the state as a whole.

**History:** En. Sec. 6, Ch. 316, L. 1971; amd. Sec. 37, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment substituted "director of health and environmental sciences"

for "director" in two places in subsection (2); deleted subdivisions stating specific powers now assigned to the department by section 69-4211.1; and made minor changes in phraseology and punctuation.

### 69-4211.1. Powers of department. The department shall:

(1) Enforce board orders by appropriate administrative and judicial proceedings.

(2) Secure necessary scientific, technical, administrative, and operational service, including laboratory facilities, by contract or otherwise.

(3) Prepare and develop a comprehensive plan for the prevention, abatement, and control of occupational disease.

(4) Encourage voluntary co-operation by persons and affected groups to achieve the purpose of this act.

(5) Encourage and conduct studies, investigations, and research relating to occupational diseases and their causes, effects, prevention, abatement, and control.

(6) Determine by means of field studies and sampling the degree of health hazard at any work place in the state.

(7) Collect and disseminate information and conduct educational and training programs relating to the prevention and control of occupational diseases.

(8) Advise, consult, contract, and co-operate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and interested persons or groups.

(9) Accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States for the purpose of carrying out this act. Funds received by the department under this section shall be deposited in the state treasury to the account of the department.

History: En. 69-4211.1 by Sec. 38, Ch. 349, L. 1974.

**69-4212. Permits.** (1) The board may, by rule or regulation, prohibit the installation, alteration, or use of any machine, equipment, device or other article which it finds may cause or contribute to occupational disease or which is intended primarily to prevent or control occupational disease, unless a permit therefor has been obtained from it.

(2) The board may require that applications for such permits shall be accompanied by plans, specifications, and such other information as it deems necessary.

(3) The board shall provide for the issuance, suspension, revocation, and renewal of any permits which it may require pursuant to this section.

(4) If a permit is required, the board must decide within ninety (90) days after receiving application therefor, whether or not the permit will issue. If no decision is rendered within that time, permission shall be deemed to have been denied.

History: En. Sec. 7, Ch. 316, L. 1971.

**69-4213. Inspection.** (1) The department may enter and inspect, at a reasonable time, property, premises, or a place, except a private residence, where a person is or will be employed to ascertain the state of compliance with this act and rules adopted under it.

(2) A person may not refuse entry or access to the department when it requests entry for purposes of inspection. A person may not obstruct, hamper, or interfere with an inspection.

(3) At his request, the owner or operator of the premises shall receive a report setting forth facts found which relate to compliance status.



History: En. Sec. 8, Ch. 316, L. 1971; amd. Sec. 39, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment substituted "The department" for "Any duly authorized

officer, employee, or representative of the board" at the beginning of subsection (1); substituted "the department" for "any authorized representative of the board" in subsection (2); and made minor changes in phraseology and punctuation.

**69-4214. Emissions prohibited.** (1) The board may establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source necessary to prevent, abate or control occupational diseases. Except as otherwise provided in or pursuant to this section, such levels, concentrations, or quantities shall be controlled and no emissions in excess thereof shall be lawful. The board may also establish standards for sanitary facilities and lunchrooms.

(2) The board may by rule use any widely recognized measuring system for measuring emissions of pollutants.

(3) Should federal minimum standards of industrial hygiene or occupational health be set by federal law, the board may, if necessary, set more stringent standards by rule or regulation.

History: En. Sec. 9, Ch. 316, L. 1971.

**69-4215. Enforcement.** (1) When the department has reason to believe that a violation of this act or rule made under this act has occurred, it may have written notice served on the alleged violator, and the facts alleged to constitute a violation, and may include an order to take necessary corrective action within a reasonable period of time stated in the order. An order becomes final unless, no later than thirty (30) days after the date of notice is received, the person named requests in writing a hearing before the board. On receipt of a request, the board shall hold a hearing.

(2) If, after a hearing held under subsection (1) of this section, the board finds that a violation has occurred, it shall either affirm or modify an order previously issued, or issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action it considers appropriate. If, after hearing on an order contained in a notice, the board finds that no violation is occurring, it shall rescind the order. An order issued as part of a notice or after hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the pollutant.

(3) Instead of issuing the order provided for in subsection (1) of this section, the board may either:

(a) Require that the alleged violator appear before it for a hearing at a time and place specified in a notice, and answer the charges complained of; or

(b) Initiate action under section 69-4221.

(4) This act does not prevent the board from making efforts to obtain voluntary compliance through warning, conference, or other appropriate means.

(5) In connection with a hearing held under this section, the board may, and on application by a party shall, compel the attendance of witnesses and the production of evidence on behalf of parties.

History: En. Sec. 10, Ch. 316, L. 1971; partment" for "director" in the first sentence of subsection (1) and made minor changes in phraseology and punctuation.

#### Amendments

The 1974 amendment substituted "de-

**69-4216. Emergency procedure.** (1) Any other law to the contrary notwithstanding, if the department finds that a generalized hazard at a work place exists and that it creates an emergency requiring immediate action to protect human health, the department shall order persons causing or contributing to the hazard to reduce or discontinue immediately the emissions creating the hazard. Upon issuance of this order, the department shall fix a place and time, not later than seventy-two (72) hours thereafter, for a hearing to be held before the board. Not more than twenty-four (24) hours after the commencement of the hearing, and without adjournment, the board shall affirm, modify, or set aside the order of the department.

(2) In the absence of a generalized condition as that referred to in subsection (1) of this section, if the department finds that emissions from an operation are causing imminent danger to human health, it may order the person responsible for the operation in question to reduce or discontinue emissions immediately, without regard to section 69-4215. In this event, the requirements for hearing and affirmance, modification, or setting aside of orders provided in section 69-4215 apply.

(3) This section does not limit any power which the governor or any other officer may have to declare an emergency and act on the basis of the declaration, whether the power is conferred by statute, constitutional provisions, or inheres in the office.

History: En. Sec. 11, Ch. 316, L. 1971; ences to "department" for references to "director" in subsections (1) and (2) and made minor changes in phraseology and punctuation.

#### Amendments

The 1974 amendment substituted refer-

**69-4217. Variances.** (1) Any person who owns or is in control of any plant, building, structure process or equipment may apply to the board for an exemption or partial exemption from rules or regulations governing the quality, nature, duration, or extent of emissions of pollutants. The application shall be accompanied by such information and data as the board may require. The board may grant such exemption or partial exemption if it finds that:

(a) The emissions occurring or proposed to occur do not constitute an immediate danger to the health and safety of the worker.

(b) Compliance with the rules and regulations from which exemption is sought would produce hardship without equal or greater benefits to the worker.

(2) No exemption or partial exemption shall be granted pursuant to this section except after public hearing on due notice and until the board has considered the relative interests of the applicant, and the worker or workers involved.

(3) No exemption or partial exemption pursuant to this section shall be granted for a period to exceed one (1) year, but any such exemption

or partial exemption may be renewed for like periods if no complaint is made to the board on account thereof or if, such complaint having been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty (60) days prior to the expiration of the exemption or partial exemption. Immediately prior to application for renewal the applicant shall give public notice of such application in accordance with rules and regulations of the board. Any renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (a) of this section.

(4) An exemption, partial exemption or renewal thereof shall not be a right of the applicant or holder thereof but shall be in the discretion of the board. However, any person adversely affected by an exemption, partial exemption or renewal granted by the board may obtain judicial review thereof as provided by section 13 [69-4218] of this act.

(5) Nothing in this section and no exemption, partial exemption or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of section 11 [69-4216] of this act to any person or his property.

**History:** En. Sec. 12, Ch. 316, L. 1971.

**69-4218. Hearings and judicial review.** (1) No rule or amendment or repeal thereof shall take effect except after public hearing on due notice. Such notice shall be given by public advertisement not less than twenty (20) or more than thirty (30) days prior to the date set for the hearing.

(2) Nothing in this section requires a hearing prior to the issuance of an emergency order pursuant to section 69-4216.

(3) Any person aggrieved by any order of the board may apply for rehearing upon one (1) or more of the following grounds, and upon no other grounds:

(a) The board acted without or in excess of its powers.

(b) The order was procured by fraud.

(c) The order is contrary to the evidence.

(d) The applicant has discovered new evidence, material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.

(e) Competent evidence was excluded to the prejudice of the applicant. The petition must be in such form and filed in such time as the board shall prescribe.

**History:** En. Sec. 13, Ch. 316, L. 1971;  
amd. Sec. 42, Ch. 349, L. 1974.

#### **Amendments**

The 1974 amendment deleted "and after the advisory committee has been afforded not less than thirty (30) days prior to publication of the proposed text to com-

ment thereon" at the end of the first sentence in subsection (1); deleted provisions pertaining to appeals to the district court from denial of an application for rehearing or from a decision on rehearing and to appeals from the district court decision to the supreme court and made minor changes in phraseology.

**69-4219. Confidentiality of records.** (1) Records or other information concerning pollutants or operations which are furnished to or obtained by



the board or department, and which, as certified by the owner or operator, relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely his competitive position, are only for the confidential use of the board or department in the administration of this act, unless the owner expressly agrees to their publication or availability to the general public.

(2) This section does not prevent the use of records or information by the board or department in compiling or publishing analyses or summaries relating to the general condition at the work place, if the analyses or summaries do not identify an owner or operator or reveal information made otherwise confidential by this section.

**History:** En. Sec. 14, Ch. 316, L. 1971; amd. Sec. 43, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment inserted "or de-

partment" after "board" in subsections (1) and (2) and made minor changes in phraseology and punctuation.

**69-4220. Application for federal aid.** The department may make application for, receive, administer, and expend any federal aid for the control of occupational diseases or the development and administration of industrial hygiene programs related to occupational disease control, provided that any such application is first submitted to and approved by the board. The board shall approve any such application if it is consistent with this act and any other applicable requirements of law.

**History:** En. Sec. 15, Ch. 316, L. 1971.

**69-4221. Penalties.** (1) A person who violates this act relating to limitations of levels, concentrations, or quantities of emissions of various pollutants from a source determined to be necessary to prevent, abate, or control occupational diseases (unless in compliance with this act) is guilty of an offense and subject to a fine not to exceed one thousand dollars (\$1,000). Each day of violation constitutes a separate offense.

(2) Proceedings under this section are not a bar to enforcement of this act, or of rules or orders made under it by injunction or other appropriate remedy. The department may institute and maintain in the name of the state these enforcement proceedings.

(3) This act does not abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damage or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.

(4) Fines collected shall be deposited to the state general fund.

**History:** En. Sec. 16, Ch. 316, L. 1971; amd. Sec. 44, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "board" in the second sentence of subsection (2) and made minor changes in phraseology and punctuation.

is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

#### Separability Clause

Section 17 of Ch. 316, Laws 1971 read "Severability. It is the intent of the legislative assembly that if a part of this act

#### Repealing Clause

Section 18 of Ch. 316, Laws 1971 read "Sections 69-4201, 69-4202, 69-4203 and 69-4205, R. C. M., 1947, are hereby repealed."

## CHAPTER 43—TUBERCULOSIS CONTROL

## Section

- 69-4304. Functions, powers, and duties of department.  
 69-4316. Transportation expenses—payment by county.  
 69-4317. Facilities for diagnosis and treatment of tuberculosis.

**69-4303. Rules for determination of tuberculosis, etc.****Compiler's Notes**

Section 104, Ch. 349, Laws 1974, substituted "department of health and environ-

mental sciences" in this section for "state board of health."

**69-4304. Functions, powers, and duties of department.** (1) The department shall;

(a) Accept, spend, and distribute federal funds available for tuberculosis control;

(b) Collect and study data on the incidence of tuberculosis.

(2) The department may, if appropriate, contract with federal agencies or other state agencies for receipt and expenditure of federal funds.

**History:** En. Sec. 27, Ch. 197, L. 1967; amd. Sec. 45, Ch. 349, L. 1974.

caption and in subsections (1) and (2); deleted "under policy guidance of the state board" at the beginning of subsection (1); and made minor changes in phraseology and punctuation.

**Amendments**

The 1974 amendment substituted "department" for "state department" in the

**69-4306. Application to require examination, etc.****Compiler's Notes**

Section 107, Ch. 349, Laws 1974, substituted

"department" in this section for "state board."

**69-4316. Transportation expenses—payment by county.** Expenses of transporting a person to a hospital for commitment shall be paid from the general fund of the county from which the person is committed. The charge for care, treatment, and maintenance at Galen state hospital shall be at the rate fixed by law.

**History:** En. Sec. 39, Ch. 197, L. 1967; amd. Sec. 46, Ch. 349, L. 1974.

**Amendments**

The 1974 amendment substituted "Galen state hospital" for "The state pulmonary disease hospital" in the second sentence.

**69-4317. Facilities for diagnosis and treatment of tuberculosis.** Galen state hospital shall maintain facilities to carry out this chapter.

**History:** En. Sec. 40, Ch. 197, L. 1967; amd. Sec. 47, Ch. 349, L. 1974.

state hospital" for "The state pulmonary disease hospital" at the beginning of the section and made a minor change in phraseology.

**Amendments**

The 1974 amendment substituted "Galen

## CHAPTER 44—VITAL STATISTICS

## Section

- 69-4401. Definitions.  
 69-4404. Disclosure of data in vital statistics records—inspection of records.  
 69-4405. Disclosure of information to governmental agencies.  
 69-4409. Local registrars—appointment—supervision.  
 69-4420. Substitute birth certificate—procedure for issuance.  
 69-4421. Substitute birth certificate—procedure for recording.  
 69-4428.1. Disinterment—permit.

**69-4401. Definitions.** Unless the context requires otherwise, in this chapter:

(1) "Vital statistics" includes the registration, preparation, transcription, collection, compilation, and preservation of data pertaining to births, adoptions, legitimations, deaths, fetal deaths, marital status, and incidental supporting data.

(2) to (4) \* \* \* [Same as parent volume.]

(5) "Person in charge of interment" means a person who places or causes to be placed, a dead body or the ashes after cremation, in a grave, vault, urn, or other receptacle, or otherwise disposes of the body.

(6) "Physician" means a person legally authorized to practice medicine in this state.

(7) "Local registrar" means a person appointed by the department of health and environmental sciences to act as its agent in administering this chapter in the area set forth in the letter of appointment.

History: En. Sec. 41, Ch. 197, L. 1967; amd. Sec. 48, Ch. 349, L. 1974.

ment of health and environmental sciences" for "state registrar" in the definition of "Local registrar" in subdivision (7); and made minor changes in phraseology and punctuation.

#### Amendments

The 1974 amendment deleted a definition of "State registrar"; substituted "depart-

### 69-4402. State-wide system of vital statistics established, etc.

#### Compiler's Notes

Section 104, Ch. 349, Laws 1974, substituted "department of health and environ-

mental sciences" in this section for "state board of health."

### 69-4403. Functions, powers and duties of state department of health.

#### Compiler's Notes

Sections 107 and 109, Ch. 349, Laws 1974, substituted "department" throughout

this section for "state board" and "state department of health."

**69-4404. Disclosure of data in vital statistics records—inspection of records.** It is unlawful to disclose data in the vital statistics records of the department, local registrars, or county clerk and recorder unless disclosure is authorized by law and approved by the department. The department may not permit inspection of the records or issue copies of a certificate unless it is satisfied that the applicant has a direct and tangible interest in the data recorded and that the information is necessary for the determination of personal or property rights.

History: En. Sec. 44, Ch. 197, L. 1967; amd. Sec. 49, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "state board" at the end of the first sentence; substituted "depart-

ment" for "state registrar" in the second sentence; deleted a sentence at the end of the section which read: "His decision is subject to review by the state board or a court"; and made minor changes in phraseology and punctuation.

**69-4405. Disclosure of information to governmental agencies.** The board may direct the department to disclose information from its records to federal, state, county, or municipal agencies for use only as prescribed by the board. If no identification of individuals is made, the board may per-



mit the use of data contained in vital statistics records for research purposes.

**History:** En. Sec. 45, Ch. 197, L. 1967; amd. Sec. 50, Ch. 349, L. 1974.

**Amendments**

The 1974 amendment substituted "board"

for "state board" throughout the section; substituted "department" for "state registrar" in the first sentence; and made a minor change in phraseology.

**69-4406. Certified copy of certificate—effect of.**

**Compiler's Notes**

Section 110, Ch. 349, Laws 1974, substi-

tuted "department" in this section for "state registrar."

**69-4407. Certified copy of certificate—fee.**

**Compiler's Notes**

Section 107, Ch. 349, Laws 1974, substi-

tuted "department" in this section for "state board."

**69-4409. Local registrars—appointment—supervision.** The department shall:

- (1) Appoint local registrars;
- (2) Supervise local registrars and other persons required to comply with this act.

**History:** En. Sec. 49, Ch. 197, L. 1967; amd. Sec. 51, Ch. 349, L. 1974.

**Amendments**

The 1974 amendment substituted "The

department" for "The state registrar" at the beginning of the section; deleted "with approval of the state board" at the beginning of subdivision (1); and made minor changes in phraseology and punctuation.

**69-4410 to 69-4414.**

**Compiler's Notes**

Sections 107 and 110, Ch. 349, Laws 1974, substituted "department" throughout these

sections for "state board" and "state registrar."

**69-4416 to 69-4418.**

**Compiler's Notes**

Sections 107 and 110, Ch. 349, Laws 1974, substituted "department" through-

out these sections for "state board" and "state registrar."

**69-4420. Substitute birth certificate—procedure for issuance.** The procedure for issuing a substitute birth certificate for a person born in Montana and adopted is:

- (1) Before the sixteenth day of the month following the order of adoption the clerk of the district court shall forward a certified copy of the final order of adoption to the department;
- (2) The department shall prepare a substitute certificate containing:
  - (a) The new name of the adopted person;
  - (b) The true date and place of birth and sex of the adopted person;
  - (c) Statistical facts concerning the adoptive parents in place of the natural parents;
  - (d) The words "department of health and environmental sciences" substituted for the words "attendant's own signature"; and
  - (e) Dates of recording as shown on the original birth certificate.

**History:** En. Sec. 60, Ch. 197, L. 1967; amd. Sec. 52, Ch. 349, L. 1974.

**Amendments**

The 1974 amendment substituted "department" for "state registrar" at the end

of subdivision (1) and at the beginning of subdivision (2); substituted "department of health and environmental sciences" for "state registrar" in subdivision (2)(d); and made minor changes in phraseology and punctuation.

**69-4421. Substitute birth certificate—procedure for recording.** (1) The procedure for recording a substitute certificate of birth for a person born in Montana and adopted is:

(a) The department shall send copies of the substitute certificate to the local registrar and to the county clerk and recorder;

(b) The local registrar and county clerk and recorder shall immediately enter the substitute birth certificate in its files and forward copies of the original birth record to the department;

(c) The department shall seal original birth records and open them only on demand of the adopted person if of legal age, or on order of a court.

(2) On receipt of a certified copy of a court order annulling an adoption, the department shall restore the original certificate to its place in its files and notify the local registrar and county clerk and recorder.

**History:** En. Sec. 61, Ch. 197, L. 1967; amd. Sec. 53, Ch. 349, L. 1974.

**Amendments**

The 1974 amendment substituted "de-

partment" for "state registrar" throughout the section and made minor changes in phraseology and punctuation.

**69-4423. Proof of legitimation, etc.**

**Compiler's Notes**

Section 110, Ch. 349, Laws 1974, substi-

tuted "department" throughout this section for "state registrar."

**69-4425. Death certificate—preparation and filing.**

**Compiler's Notes**

Section 107, Ch. 349, Laws 1974, substi-

tuted "department" in this section for "state board."

**69-4428.1. Disinterment—permit.** (1) A body, after burial, may be disinterred for reinterment or transport, upon obtaining a permit therefor from the local registrar of the jurisdiction where the body is interred.

(2) Administration of the act shall be in the department of health and environmental sciences, which shall adopt rules accordingly. The rules shall provide that as a right to the permit the applicant make a showing of reasonable cause for the disinterment.

(3) This act provides a supplementary procedure for disinterment of a dead body, and is not amendatory to or repealing of any other act.

**History:** En. Sec. 1, Ch. 481, L. 1973.

**Title of Act**

An act providing for permits for disin-

terments of dead bodies and for administration by the department of health and environmental sciences.

**69-4431 to 69-4435.**

**Compiler's Notes**

Sections 107 and 110, Ch. 349, Laws 1974, substituted "department" throughout these

sections for "state board" and "state registrar."

## CHAPTER 45—LOCAL BOARDS OF HEALTH

## Section

- 69-4502. General supervision by department of health and environmental sciences.  
 69-4503. Federal funds—acceptance—allocation.  
 69-4508. Financing of local boards of health—appropriations—tax levies.  
 69-4509. Functions, powers and duties of local boards of health.  
 69-4510. Local health officers—powers and duties.

**69-4502. General supervision by department of health and environmental sciences.** The department of health and environmental sciences has general supervision over local boards.

**History:** En. Sec. 79, Ch. 197, L. 1967;  
 amd. Sec. 54, Ch. 349, L. 1974.

which read: "With approval of the state board of health, the state department of health has general supervision over local boards."

**Amendments**

The 1974 amendment rewrote this section

**69-4503. Federal funds—acceptance—allocation.** The department may accept funds for public health from an agency of the federal government, or from any other agency or person, and allocate funds to local boards.

**History:** En. Sec. 80, Ch. 197, L. 1967;  
 amd. Sec. 55, Ch. 349, L. 1974.

proval of the state board" at the beginning of the section and substituted "department" for "executive officer of the state department of health."

**Amendments**

The 1974 amendment deleted "With ap-

**69-4508. Financing of local boards of health—appropriations—tax levies.** (1) Local boards are financed by general fund appropriations, special levy appropriations, state and federal funds available, and contributions from school boards and other official and nonofficial agencies.

(2) Appropriations are made as follows:

(a) and (b) \* \* \* [Same as parent volume.]

(c) If a city-county board is created:

(i) The county commissioners and governing body of the city, or cities, may mutually agree upon the division of expenses. The county part of total expenses is financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under chapter 19, Title 16, R. C. M. 1947. The city, or cities, part of total costs is financed by an appropriation from the general fund of the city, or cities, participating in the city-county board after approval of a budget in the way provided for other city offices and departments under chapter 14, Title 11, R. C. M. 1947. All moneys shall be deposited with the county treasurer who shall disburse them as county funds; or

(ii) In first and second class counties, the county commissioners and governing body of the city, or cities, may mutually agree upon the division of the expenses. The county part of total expenses is financed by a special levy of not more than five (5) mills on the taxable valuation of all property outside the incorporated limits of the city, or cities, participating in the city-county board after approval of a budget in the way provided for other county offices and departments under chapter 19, Title 16, R. C. M. 1947. If the five (5) mill levy is not sufficient to fund the county share, county



commissioners may supplement it with an appropriation from the county general fund. Each city, or cities, part of total costs is financed by a special levy of not more than five (5) mills on the taxable valuation of all property within the incorporated limits of the city, or cities, participating in the city-county board after approval of a budget in the way provided for other city offices and departments under chapter 14, Title 11, R. C. M. 1947. All moneys shall be deposited with the county treasurer who shall disburse them as county funds. The special levies authorized by this subsection are in addition to all other levies authorized by law.

(d) \* \* \* [Same as parent volume.]

(3) \* \* \* [Same as parent volume.]

(4) If the general fund of a city or county is not sufficient to meet the approved budget, a levy of not more than one (1) mill may be made on the taxable valuation of all property in the city or county in addition to all other levies authorized by law. This subsection does not apply when the board has been financed under subsection (2) (c) (ii) of this section.

**History:** En. Sec. 85, Ch. 197, L. 1967; the provision designated as subdivision (2) amd. Sec. 1, Ch. 351, L. 1974. (c)(ii); and added the last sentence in subsection (4).

#### Amendments

The 1974 amendment inserted "special levy appropriations" in subsection (1); inserted the subdivision designation (2) (c)(i); substituted "may mutually agree" for "shall mutually agree" in the first sentence in subdivision (2)(c)(i); inserted

#### Effective Date

Section 2 of Ch. 351, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 28, 1974.

**69-4509. Functions, powers and duties of local boards of health. (1)** Local boards shall:

(a) appoint a local health officer who is a physician or a person with a master's degree in public health or equivalent and appropriate experience as determined by the department and fix his salary;

(b) to (h) \* \* \* [Same as parent volume.]

(2) Local boards may:

(a) to (j) \* \* \* [Same as parent volume.]

(k) adopt rules, which do not conflict with rules adopted by the department;

(i) to (iv) \* \* \* [Same as parent volume.]

**History:** En. Sec. 86, Ch. 197, L. 1967; amd. Sec. 4, Ch. 216, L. 1969; amd. Sec. 1, Ch. 196, L. 1971; amd. Secs. 108, 111, Ch. 349, L. 1974.

#### Amendments

The 1971 amendment inserted "or a person with a master's degree in public

health or equivalent and appropriate experience as determined by the executive officer" in subdivision (1)(a).

The 1974 amendment substituted "department" for "executive officer" in subdivision (1)(a) and substituted "department" for "state board" in subdivision (2)(k).

**69-4510. Local health officers—powers and duties. (1)** Local health officers, or their authorized representatives, shall:

(a) Make inspections for sanitary conditions;

(b) As directed by the local board, issue written orders for the destruction and removal of filth which might cause disease;

(c) With written approval of the department, order buildings or facilities where people congregate closed during epidemics;

(d) On forms provided by the department, report communicable diseases to the department each week;

(e) Before the first day of January, April, July, and October, give a report to the local board of sanitary conditions in the county, city, city-county, or district, together with a detailed account of his activities on forms and containing information required by the department;

(f) Before the tenth day after the report is given to the local board, send a copy of the report required by subsection (1) (e) of this section to the department;

(g) As prescribed by rules adopted by the department, establish and maintain quarantines;

(h) As prescribed by rules adopted by the department, supervise the disinfection of places at the expense of the local board when a period of quarantine ends;

(i) Notify the department of his appointment and changes in membership of the local board;

(j) File a complaint with the appropriate court if this chapter or rules adopted by the local board or state department under this chapter are violated.

(2) With approval of the department, local health officers may forbid persons to assemble in a place if the assembly endangers public health.

(3) A local health officer, who is a physician, may be placed in charge of a communicable disease hospital, but a local health officer, who is a physician, is not required to act as a physician to the indigent. A local health officer, who is not a physician, shall not act as a physician to anyone.

**History:** En. Sec. 87, Ch. 197, L. 1967; amd. Sec. 2, Ch. 196, L. 1971; amd. Sec. 56, Ch. 349, L. 1974.

#### **Amendments**

The 1971 amendment inserted "who is a physician" in two places in the first sentence of subsection (3); added the second sentence to subsection (3); and made minor changes in phraseology and punctuation.

The 1974 amendment substituted "department" for "executive officer" in subdivisions (1)(c) and (1)(d) and in subsection (2); substituted "department" for "state board" in subdivisions (1)(g), (1)(h), and (1)(j); substituted "department" for "state health department" in subdivision (1)(i); and made minor changes in phraseology and punctuation.

### **69-4511. Local health officers—appointment.**

#### **Compiler's Notes**

Section 108, Ch. 349, Laws 1974, substituted

"department" throughout this section for "state board."

### **69-4519. Penalty.**

#### **Compiler's Notes**

Section 108, Ch. 349, Laws 1974, substituted

"department" in this section for "state board."

## **CHAPTER 46—VENEREAL DISEASE**

#### **Section**

- 69-4602. Education campaigns by department of health and environmental sciences—co-operation with federal agencies—use of federal funds.  
 69-4603. Acceptance and disbursement of federal funds for control of venereal disease.  
 69-4610. Information concerning infected persons—release.

**69-4602. Education campaigns by department of health and environmental sciences—co-operation with federal agencies—use of federal funds.** The department of health and environmental sciences shall undertake to prevent, control, and prescribe treatments for venereal diseases and may conduct education campaigns for this purpose. The department shall co-operate with federal agencies and may expend federal funds made available to the state for the prevention, control, and treatment of venereal diseases.

**History:** En. Sec. 98, Ch. 197, L. 1967; amd. Sec. 57, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment substituted "department of health and environmental sci-

ences" for "state department of health" in the caption and in the first sentence; deleted "Under policy guidance of the state board of health" at the beginning of the first sentence; and made minor changes in phraseology and punctuation.

**69-4603. Acceptance and disbursement of federal funds for control of venereal disease.** The department may accept federal funds available for the prevention, control, and treatment of venereal diseases, deposit funds in the state treasury, and disburse the funds.

**History:** En. Sec. 99, Ch. 197, L. 1967; amd. Sec. 58, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment deleted "With approval of the state board" at the begin-

ning of the section; substituted "department" for "the executive officer of the state department of health"; and made minor changes in phraseology and punctuation.

**69-4610. Information concerning infected persons—release.** Information concerning persons infected or reasonably suspected to be infected with venereal disease may only be released to:

- (1) personnel of the department; or
- (2) a physician who has written consent of the person whose record is requested.

For the purposes of this section the term "information" includes all knowledge or intelligence, and all communications of all knowledge or intelligence, oral or written, or in record form, and also includes, but is not limited to, information concerning the location or nature of the activities or work of all local, state, or federal employees, or officers, engaged in venereal disease eradication work, and such personnel are privileged and shall not be required to testify concerning anything within their knowledge or work activities having any relation to venereal disease work. The purpose of this section is to protect and preserve the principle of confidentiality in venereal disease work by public personnel, local, state, and federal, such confidentiality being all important to the success of all venereal disease eradication work and endeavor, and to require that the principle of confidentiality in such work remain inviolate.

**History:** En. Sec. 106, Ch. 197, L. 1967; amd. Sec. 1, Ch. 135, L. 1971; amd. Sec. 109, Ch. 349, L. 1974.

The 1974 amendment substituted "department" for "state department of health" in clause (1).

#### Amendments

The 1971 amendment added the paragraph following the numbered clauses.



**69-4612 to 69-4615. Repealed.****Repeal**

Sections 69-4612 to 69-4615 (Secs. 108 to 111, Ch. 197, L. 1967), relating to test-

ing of pregnant women for syphilis, were repealed by Sec. 11, Ch. 228, Laws 1973. For new law, see secs. 69-6701 to 69-6709.

**69-4616, 69-4617.****Compiler's Notes**

Section 107, Ch. 349, Laws 1974, substi-

tuted "department" in these sections for "state board."

**CHAPTER 47—SHODDY CONTROL****69-4702. Label required.****Compiler's Notes**

Section 104, Ch. 349, Laws 1974, substituted "department of health and environ-

mental sciences" in this section for "state board of health."

**69-4703, 69-4704.****Compiler's Notes**

Section 107, Ch. 349, Laws 1974, substi-

tuted "department" throughout these sections for "state board."

**69-4705. Inspections by health authorities.****Compiler's Notes**

Sections 107 and 109, Ch. 349, Laws 1974, substituted "department" throughout this

section for "state board" and "state department of health."

**69-4706. Condemnation of mattresses unlawfully made.****Compiler's Notes**

Section 107, Ch. 349, Laws 1974, substi-

tuted "department" in this section for "state board."

**CHAPTER 48—WATER POLLUTION****Section**

69-4801. Public policy of the state.

69-4802. Definitions.

69-4804. Chapter applicable to drainage or seepage from artificial bodies of water privately owned.

69-4805. Administration of chapter.

69-4806. Pollution unlawful—permits.

69-4807.1. Denial, modification, suspension, and revocation of permit—notice—hearing—effective date.

69-4808.1. Board to control state matching funds for construction of water pollution control facilities—limit on funds.

69-4808.2. Duties of board.

69-4808.3. Department of health and environmental sciences to administer funds aiding local governments—limit and conditions of funds.

69-4809.1. Duties of department.

69-4809.2. Power to inspect and monitor—authority.

69-4812. Water pollution control advisory council—officers—meetings—designating of deputy by member.

69-4814. Hearings by board—notice.

69-4820. Violation of chapter or rule—notice to violator—hearing before board—notice, procedure, order, rehearing.

69-4820.1. Additional enforcement remedies.

69-4821. Judicial remedies—review by district court.

69-4822. Confidentiality of records.

69-4823. Penalties for violation of provisions, rule, permit, effluent standard, or order—purpose and construction of chapter.

69-4824. Emergencies.

69-4824.1. Additional emergency powers.

69-4825. Injunctions.

69-4826. Action by other parties.

69-4827. Co-operation with the council, board, and department.

**69-4801. Public policy of the state.** (1). \* \* \* [Same as parent volume.]

(2) It is not necessary that wastes be treated to a purer condition than the natural condition of the receiving stream. "Natural" refers to conditions or material present from runoff or percolation over which man has no control or from developed land where all reasonable land, soil and water conservation practices have been applied. Conditions resulting from dams at the effective date of this act are "natural."

**History:** En. Sec. 121, Ch. 197, L. 1967; second and third sentences of subsection  
amd. Sec. 1, Ch. 21, L. 1971. (2) for "However, municipal or industrial  
pollution upstream shall not be considered  
natural."

**Amendments**

The 1971 amendment substituted the

**69-4802. Definitions.** Unless the context requires otherwise in this chapter:

(1) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings including discharge from human beings or animals together with ground water infiltration and surface water present.

(2) "Industrial waste" means any waste substance from the process of business or industry, or from the development of any natural resource together with any sewage that may be present;

(3) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, tar, chemicals, dead animals, sediment, and all other substances that may pollute state waters;

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health;

(5) "Pollution" means contamination, or other alteration of the physical, chemical, or biological properties of any state waters, which exceeds that permitted by Montana water quality standards, including, but not limited to, standards relating to change in temperature, taste, color, turbidity, or odor, or discharge of any liquid, gaseous, solid, radioactive, or other substance into any state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge which is permitted by Montana water quality standards is not "pollution" under this chapter.

(6) "Sewerage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point;

(7) "Treatment works" means works installed for treating or holding sewage, industrial wastes, or other wastes;

(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes, and includes sewerage systems and treatment works;

(9) "State waters" means any body of water, irrigation system, or drainage system either surface or underground; however, this subsection does not apply to irrigation waters where the waters are used up within

the irrigation system and the waters are not returned to any other state waters;

(10) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity;

(11) "Council" means the state water pollution control advisory council provided for in section 82A-607;

(12) "Board" means the board of health and environmental sciences, provided for in section 82A-605;

(13) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6;

(14) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health;

(15) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged;

(16) "Owner or operator" means any person who owns, leases, operates, controls or supervises a point source;

(17) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants;

(18) "Effluent standard" means any restriction or prohibition on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged into state waters.

**History:** En. Sec. 122, Ch. 197, L. 1967; amd. Sec. 2, Ch. 21, L. 1971; amd. Sec. 1, Ch. 506, L. 1973; amd. Sec. 59, Ch. 349, L. 1974.

#### Amendments

The 1971 amendment inserted "dead animals, sediment" in subdivision (3); redefined the meaning of pollution in subdivision (5); added the exception pertaining to irrigation waters at the end of subdivision (9); and added definitions of "Council," "Board," "Department," "Executive officer," "Director," and "Local department of health."

The 1973 amendment added definitions of "Point source," "Owner or operator," "Standard of performance," and "Effluent standard."

The 1974 amendment substituted "however, this subsection does not apply to irrigation waters" for "this section shall not apply to irrigation waters" in subdivision (9); substituted "state water pollution control advisory council provided for in section 82A-607" for "state water pollution advisory council" in subdivision (11); substituted "board of health and environmental sciences, provided for in section 82A-605" for "state board of health" in subdivision (12); substituted "department of health and environmental sciences provided for in Title 82A, chapter 6" for "state department of health" in subdivision (13); deleted definitions of "Executive officer" and "Director"; and made minor changes in phraseology and punctuation.

#### 69-4803. Repealed.

##### Repeal

Section 69-4803 (Sec. 123, Ch. 197, L. 1967), relating to classification of waters

for industrial use, was repealed by Sec. 22, Ch. 21, Laws 1971.

**69-4804. Chapter applicable to drainage or seepage from artificial bodies of water privately owned.** This chapter applies to drainage or seepage



from all sources including that from artificial, privately owned ponds or lagoons if such drainage or seepage may reach other state waters in a condition which may pollute the other state waters.

**History:** En. Sec. 124, Ch. 197, L. 1967; amd. Sec. 3, Ch. 21, L. 1971.

#### Amendments

The 1971 amendment completely rewrote this section. For prior version, see parent volume.

**69-4805. Administration of chapter.** (1) Except as otherwise provided, the department is responsible for administration of this chapter.

(2) The department may use its personnel and those of the local departments of health as necessary to administer this act.

**History:** En. Sec. 125, Ch. 197, L. 1967; amd. Sec. 4, Ch. 21, L. 1971; amd. Sec. 60, Ch. 349, L. 1974.

#### Amendments

The 1971 amendment completely rewrote this section. For previous text, see parent volume.

The 1974 amendment rewrote this section. Prior to amendment it read: "Except as otherwise provided, the department, acting under the supervision of the board as to matters of policy, is responsible for administration of the provisions of this chapter.

"The executive officer shall appoint a director of water pollution control to perform the duties and powers conferred upon the department by this act. The director shall meet requirements established by the

board. The director shall have a minimum of five (5) years of responsible experience in water pollution control or aquatic ecology programs. His salary shall be set in accord with other members of the staff with the same degree of responsibility and training. He will be responsible for the administration of the water pollution control act within the limitations of funds and personnel assigned.

"The executive officer shall, in the absence of a director of water pollution control, assign another member of the staff to perform the duties and exercise the powers of a director.

"The department may use personnel of the state and local departments of health as necessary to administer the provisions of this act."

**69-4806. Pollution unlawful—permits.** It is unlawful to:

(1) cause pollution as defined in section 69-4802 (5), R. C. M. 1947, of any state waters or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any state waters;

(2) carry on any of the following activities without a current permit from the department;

(a) construct, modify, or operate a disposal system which discharges to any state waters; or

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes to any state waters; or

(3) violate any limitation imposed by a current permit.

**History:** En. Sec. 126, Ch. 197, L. 1967; amd. Sec. 5, Ch. 21, L. 1971.

#### Amendments

The 1971 amendment combined former paragraphs (2) (a) and (2) (b) into new paragraph (2) (a); deleted a paragraph (2) (c) reading "increase the volume or

strength of sewage, industrial wastes, or other wastes in excess of the permissive discharges specified under any existing permit"; redesignated former paragraph (2) (d) as (2) (b); deleted "new" before "outlet" in present paragraph (2) (b); added subdivision (3); and made minor changes in phraseology and style.

**69-4807. Repealed.****Repeal**

Section 69-4807 (Sec. 127, Ch. 197, L. 1967; Sec. 1, Ch. 277, L. 1969), relating to

issuance and revocation of permits, was repealed by Sec. 22, Ch. 21, Laws 1971.

**69-4807.1. Denial, modification, suspension, and revocation of permit—notice—hearing—effective date.** (1) If the department denies an application for a permit or modifies a permit, the department shall give written notice of its action to the applicant or holder, and he may request a hearing before the board, in the manner stated in section 13 [69-4820] of this act, for the purpose of petitioning the board to reverse or modify the action of the department. Such hearing shall be held within thirty (30) days after receipt of written request. After the hearing, the board shall affirm, modify, or reverse the action of the department. Modification of a permit shall be effective thirty (30) days after receipt of notice by the holder, unless the department specifies a later date, if the holder does not request a hearing before the board. If the holder does request a hearing before the board, no order modifying his permit shall be effective until twenty (20) days after he has received notice of the action of the board.

(2) If the department suspends or revokes a permit because it has reason to believe that the holder has violated this chapter, the department may specify that the suspension or revocation is effective immediately, if the department finds that the violation is likely to continue and will cause pollution the harmful effects of which will not be remedied immediately on the cessation of the violation. Upon petition by the holder of the permit, the board shall grant the holder a hearing, to be conducted in the manner specified in section 13 [69-4820] of this act and shall issue an order affirming, modifying, or reversing the action of the department. The order of the board shall be effective immediately, unless the board directs otherwise.

**History:** En. Sec. 14, Ch. 21, L. 1971.

**Title of Act**

An act to revise the Water Pollution Control Act by placing administration of the act with the department of health under policy guidance from the board of health; redefining the meaning of pollution; broadening the activities under which a permit must be gained under section 69-4806, R. C. M. 1947; defining the duties of the board of health and department of health; including as a member of the state water pollution advisory council, the commissioner of agriculture, deleting representative of agriculture, adding a livestock feeder, a representative from labor, a supervisor of a soil and water conservation district, a representative of an organization concerned with water rec-

reation and a representative of an organization concerned with fishing for sport; changing the name of the state water pollution control council to the state water pollution advisory council and redefining its function; providing for a director of water pollution control; enacting a new hearing and appeals procedure; adopting a new emergencies procedure; amending sections 69-4801, 69-4802, 69-4804, 69-4805, 69-4806, 69-4810, 69-4811, 69-4812, 69-4813, and 69-4814, R. C. M. 1947, and repealing sections 69-4803, 69-4807, 69-4808, 69-4809, 69-4815, 69-4816, 69-4817, 69-4818 and 69-4819, R. C. M. 1947.

It is the intent of the Montana legislative assembly that all provisions of this act be codified in Title 69, chapter 48, R. C. M. 1947.

**69-4808. Repealed.****Repeal**

Section 69-4808 (Sec. 128, Ch. 197, L. 1967), relating to duties of the state board

of health, was repealed by Sec. 22, Ch. 21, Laws 1971.

**69-4808.1. Board to control state matching funds for construction of water pollution control facilities—limit on funds.** (1) The board shall control funds appropriated by the state for the purpose of providing matching funds to local governments for the construction of water pollution control facilities. The board shall adopt rules and establish standards for the use of such matching funds, by local governments, in the planning and construction of local water pollution control facilities.

(2) Funds appropriated under this act shall be used only to provide an increase in the aid from the federal government not otherwise obtainable and may not exceed twenty-five per cent (25%) of the total cost of the project as participated in by the federal water pollution control administration.

**History:** En. Sec. 1, Ch. 165, L. 1969; amd. Sec. 61, Ch. 349, L. 1974.

**Amendments**

The 1974 amendment inserted the nu-

merical subsection designations; substituted "board" for "state board of health" in the caption and in two places in subsection (1); and made minor changes in phraseology and punctuation.

**69-4808.2. Duties of board.** (1) The board shall:

(a) Establish and modify the classification of all waters in accordance with their present and future most beneficial uses.

(b) Formulate standards of water purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention.

(c) Review from time to time, at intervals of not more than three (3) years, established classifications of waters and standards of water purity and classification, and:

(i) The classifications, standards, and rules which have been adopted by the state water pollution control council under section 69-4813 are, without necessity of a hearing, initially adopted by the board.

(ii) In revising classifications or standards or in adopting new classifications or standards the board may not so formulate standards of water purity or classify any state water as to lower any water quality standard applicable to any state water below the level applicable under the classifications and standards adopted by the state water pollution control council under section 69-4813.

(iii) The board shall require that any state waters whose existing quality is better than the established standards as of the date on which the standards become effective be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated use of these waters; and

(iv) The board shall require any industrial, public, or private project or development, which would constitute a new source of pollution or an increased source of pollution to high quality waters, referred to in subsection (1)(c)(iii), to provide the degree of waste treatment necessary to maintain that existing high water quality.

(d) Advise, consult, and co-operate with other states, other state and federal agencies, affected groups, political subdivisions, and industries in the formulation of a comprehensive plan to prevent and control pollution.



(e) Adopt rules governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems.

(f) Adopt rules governing the issuance, denial, modification, or revocation of permits, and:

(i) The rules shall allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that:

(ii) The rules may allow the issuance of a temporary permit under which pollution may result, for a period no longer than three (3) years and subject to no extension, if the department finds that the issuance of a permit is proper for obtaining compliance with the applicable standards;

(iii) The rules shall provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible; and

(iv) A person introducing a new source or increased source of sewage, industrial waste, or other wastes as defined in section 69-4802 (1), (2), and (3), to waters and tributaries of waters classified as A-open-D-1 or higher by the board shall be required to install and maintain the highest and best degree of treatment works necessary to maintain adequately this classification, as defined in section 69-4802 (7) before the issuance of a permit by the department.

(g) Hold hearings necessary for the proper administration of this chapter.

(h) Adopt rules for the administration of this chapter.

(i) Adopt pretreatment standards for waste-water discharged into a municipal disposal system, adopt effluent standards as defined in section 69-4802(20); and establish standards of performance for new point source discharges.

(2) The board may:

(a) accept loans and grants from the federal government and other sources to carry out the provisions of this chapter; and

(b) establish minimum requirements for the treatment of wastes.

**History:** En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974.

#### Compiler's Notes

Section 69-4813, referred to in subdivisions (1)(c)(i) and (1)(c)(ii) of this section, was repealed by Sec. 113, Ch. 349, Laws of 1974.

#### Amendments

The 1973 amendment inserted subdivision (1)(i) authorizing the board to adopt pretreatment standards for waste-water discharged into a municipal disposal system.

The 1974 amendment deleted a provision authorizing the board to "bring actions in court for the enforcement of this chapter" and made numerous minor changes in phraseology and punctuation.

**69-4808.3. Department of health and environmental sciences to administer funds aiding local governments—limit and conditions of funds.** (1) The department of health and environmental sciences is designated as the

state agency which shall administer and control all funds to be appropriated for the purpose of aiding local governments not entitled to state matching funds under the provisions of section 69-4808.1 for construction of water pollution control facilities, but which are now, under the provisions of the Federal Water Pollution Control Act amendments of 1972 entitled to reimbursable federal grant funding.

(2) This act applies to only publicly owned treatment works on which construction was initiated after June 30, 1966, but before July 1, 1970.

(3) The department of health and environmental sciences shall promulgate rules for the use of the funds.

(4) Any funds appropriated shall in no case exceed twenty-five per cent (25%) of the total cost of the project.

(5) Nothing in this act shall result in any such project receiving state funds where fund participation from all sources, federal and state, shall be in excess of eighty per cent (80%) of the cost of such project.

**History:** En. Sec. 1, Ch. 122, L. 1973.

**Title of Act**

An act designating the department of health and environmental sciences as the agency to administer state funds to be

used for aiding local governments which were not entitled to state matching funds under the provisions of section 69-4808.1, R. C. M. 1947, for construction of water pollution control facilities.

**69-4809. Repealed.**

**Repeal**

Section 69-4809 (Sec. 129, Ch. 197, L. 1967), relating to powers and duties of

the state department of health, was repealed by Sec. 22, Ch. 21, Laws 1971.

**69-4809.1. Duties of department. (1) The department shall:**

(a) Issue, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other wastes to state waters, consistently with rules made by the board;

(b) Examine and approve or disapprove plans and other information needed to determine whether a permit should be issued or suggest changes in plans as a condition to the issuance of a permit;

(c) Clearly specify in any permit any limitations imposed as to the volume, strength, and other significant characteristics of the waste to be discharged;

(d) Collect and furnish information relating to the prevention and control of water pollution;

(e) Conduct or encourage necessary research and demonstrations concerning water pollution;

(f) Issue orders to any person to clean up any material which he or his employee, agent, or subcontractor has accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and which may pollute them.

**History:** En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974.

**Amendments**

The 1973 amendment deleted a subsection (2) granting powers now covered

by section 69-4809.2 (2) and granting the power to issue, modify, or revoke abatement orders.

The 1974 amendment made minor changes in phraseology and punctuation.

**69-4809.2. Power to inspect and monitor—authority.** (1) In order to carry out the objectives of this act and to effectively monitor the discharge of sewage, industrial wastes and other wastes into state waters, the department may require the owner or operator of any point source to:

- (a) establish and maintain records;
- (b) make reports;
- (c) install, use and maintain monitoring equipment or methods, including biological monitoring techniques;
- (d) sample effluents using specified monitoring methods at designated locations and intervals;
- (e) provide other information as may be reasonably required by the department.

(2) The authorized representative of the department, upon presentation of his credentials, may at reasonable times enter upon any public or private property and have access to and copy any records required under this act, inspect any monitoring equipment or method required under subsection (1)(c), and sample any effluents which the owner or operator of such source is required to sample under that subsection.

(3) Any records, reports, or information obtained under this section shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or new source performance standards.

**History:** En. 69-4809.2 by Sec. 4, Ch. 506, L. 1973.

#### **Title of Act**

An act to grant additional powers to the department of health and environmental sciences relating to acquisition of

information and enforcement of remedies for the purpose of complying with the 1972 amendments to the Federal Water Pollution Control Act; and amending sections 69-4802, 69-4808.2, 69-4809.1 and 69-4823, R. C. M. 1947.

### **69-4810, 69-4811. Repealed.**

#### **Repeal**

Sections 69-4810 and 69-4811 (Secs. 130, 131, Ch. 197, L. 1967; Secs. 8, 9, Ch. 21, L.

1971), relating to the state water pollution advisory council, were repealed by Sec. 113, Ch. 349, Laws of 1974.

**69-4812. Water pollution control advisory council—officers—meetings—designating of deputy by member.** (1) The council provided for in section 82A-607 shall select a chairman from among its members. The director of health and environmental sciences shall designate a member of the staff of the department to act as secretary to the council. The secretary shall keep records of all actions taken by the council.

(2) It shall hold at least two (2) regular meetings each calendar year. Special meetings shall be held at the call of the chairman or on written request of two (2) or more members.

(3) Each member may, by filing with the secretary, designate a deputy or alternate to perform his duties.

(4) The council shall only act in an advisory capacity to the department on matters relating to water pollution.



**History:** En. Sec. 132, Ch. 197, L. 1967; amd. Sec. 10, Ch. 21, L. 1971; amd. Sec. 64, Ch. 349, L. 1974.

#### Amendments

The 1971 amendment substituted "member of the staff of the department of health" for "member of the public health engineering staff of the department."

The 1974 amendment substituted "Water pollution control advisory council" for

"State water pollution advisory council" in the caption; inserted "provided for in section 82A-607" in the first sentence of subsection (1); substituted "director of health and environmental sciences" for "executive officer" in the second sentence of subsection (1); deleted "A majority of the members is a quorum" at the end of subsection (2); added subsection (4); and made minor changes in phraseology and punctuation.

### 69-4813. Repealed.

#### Repeal

Section 69-4813 (Sec. 133, Ch. 197, L. 1967; Sec. 11, Ch. 21, L. 1971), relating to

powers and duties of the state water pollution advisory council, was repealed by Sec. 113, Ch. 349, Laws of 1974.

**69-4814. Hearings by board—notice.** Before streams are classified or standards established or modified, or rules made, revoked or modified, the board shall hold a public hearing. Notice of the hearing specifying the waters concerned and the classification, standards or modification of them and any rules proposed to be made, revoked or modified shall be published at least once a week for three (3) consecutive weeks in a daily newspaper of general circulation in the area affected. Notice shall also be mailed directly to persons the board believes may be affected by the proposed action. The council shall be given not less than thirty (30) days prior to first publication to comment on the proposed action.

At a hearing held under this section, the board shall give all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The board may make rules for the orderly conduct of the hearing but need not require compliance with the rules of evidence or procedure applicable to hearings held under section 13 [69-4820] of this act.

**History:** En. Sec. 134, Ch. 197, L. 1967; amd. Sec. 12, Ch. 21, L. 1971.

#### Amendments

The 1971 amendment inserted "or rules made, revoked or modified" in the first and second sentences; inserted "daily" before "newspaper of general circulation";

substituted "board" for "council" in two instances; substituted "proposed action" for "classification or standard" at the end of the second sentence; added the last sentence of the first paragraph and the present second paragraph; and made a minor change in punctuation.

### 69-4815 to 69-4819. Repealed.

#### Repeal

Sections 69-4815 to 69-4819 (Secs. 135 to 139, Ch. 197, L. 1967), relating to pro-

cedure for rehearing, appeal and injunction, were repealed by Sec. 22, Ch. 21, Laws 1971.

**69-4820. Violation of chapter or rule—notice to violator—hearing before board—notice, procedure, order, rehearing.** (1) When the department has reason to believe that a violation of this chapter or a rule made under it has occurred, it shall have written notice served personally or by mail on the alleged violator or his agent. The notice shall state the provision alleged to be violated, the facts alleged to constitute the violation, the nature of corrective action which the department requires, and the time

within which the action is to be taken. For the purposes of this chapter, service by mail is complete on the date of mailing.

(2) In a notice given under subsection (1) of this section, the department may require the alleged violator to appear before the board for a public hearing and to answer the charges made against him. The hearing shall be held no sooner than fifteen (15) days after service of the notice, except that the board may set an earlier date for hearing if it is requested to do so by the alleged violator. The board may set a later date for hearing at the request of the alleged violator if the alleged violator shows good cause for delay.

(3) If the department does not require an alleged violator to appear before the board for a public hearing, he may request the board to conduct the hearing. The request shall be in writing and shall be filed with the department no later than thirty (30) days after service of a notice under subsection (1) of this section. If a request is filed, a hearing shall be held within a reasonable time.

(4) If a hearing is held under this section, it shall be public and shall, if the board considers it practicable, be held in a county in which the violation is alleged to have occurred.

(5) After a hearing or on failure of an alleged violator to make a timely request for a hearing, the board may issue an appropriate order for the prevention, abatement, or control of pollution. It shall state the date or dates by which a violation shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution. The alleged violator may petition the board for a rehearing, on the basis of new evidence, which petition the board may grant for good cause shown.

(6) In addition to or instead of issuing an order, the board may direct the department to initiate appropriate action for recovery of a penalty under section 69-4823.

**History:** En. Sec. 13, Ch. 21, L. 1971;  
amd. Sec. 65, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "executive officer" in the second sentence of subsection (3); deleted provisions pertaining to the conduct of the hearing by the board and the attendance

of witnesses; deleted a second sentence in subsection (5) which read: "The order shall be accompanied by a statement of the board's findings, reasons, and conclusions upon all material issues of fact, law, or discretion"; inserted "direct the department to" following "the board may" in subsection (6); and made minor changes in phraseology and punctuation.

**69-4820.1. Additional enforcement remedies.** (1) In addition to all other remedies created by this act, the department is authorized to take appropriate enforcement action to:

- (a) prevent, abate, and control the pollution of state waters;
- (b) prevent, abate, and control any violation of a condition or limitation imposed by a permit issued under section 69-4806, R.C.M. 1947;
- (c) prevent, abate, and control any violations of regulations relating to pretreatment standards.

(2) Any person violating a condition, limitation, standard or other requirement established pursuant to this section may be served with a compliance order issued by the department. Such order must specify the

condition, limitation, standard or other requirement violated and must set a time for compliance. However, in establishing a time for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that have been made to comply with the condition, limitation, standard or other requirement that has been violated. The compliance order issued under this section shall be personally served by an authorized employee of the department.

(3) The department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for any violation which would be subject to a compliance order under subsection (2) of this section. Any action under this subsection may be commenced in the district court of any county in which the defendant is located or resides or is doing business, and the court shall have jurisdiction to restrain such violation and to require compliance.

(4) Any person found to be in violation of a condition, limitation, standard or other requirement established pursuant to this section shall be subject to the penalty provisions of section 69-4823, R.C.M. 1947.

(5) For the purpose of this subsection, the term "person" shall mean, in addition to the definition contained in section 69-4802, R.C.M. 1947, any responsible corporate officer.

History: En. 69-4820.1 by Sec. 5, Ch. 506, L. 1973.

**69-4821. Judicial remedies—review by district court.** (1) An appeal of an order of the board shall be in the district court of the county in which the alleged source of pollution is located.

(2) A person interested in the order may intervene, in the manner provided by the Rules of Civil Procedure, if he shows good cause. An intervenor is a party for the purposes of this chapter.

(3) The attorney general shall represent the board if requested, or the department may appoint special counsel for the proceedings, subject to the approval of the attorney general.

(4) The initiation of an action for review or the taking of an appeal does not stay the effectiveness of any order of the board, unless the court finds that there is probable cause to believe:

(a) That refusal to grant a stay will cause serious harm to the affected party, and

(b) That any violation found by the board:

(i) Will not continue, or

(ii) If it does continue, any harmful effects on state waters will be remedied immediately on the cessation of the violation.

(5) If a court does not stay the effectiveness of an order of the board, it may enforce compliance with that order by issuing a temporary restraining order or an injunction at the request of the board.

History: En. Sec. 15, Ch. 21, L. 1971; amd. Sec. 66, Ch. 349, L. 1974.

pertaining to the procedure on petition for review of an order of the board by the district court, the determinations by the court, and authorizing appeal from the district court decision to the supreme

#### Amendments

The 1974 amendment deleted provisions



court; substituted "department may appoint" for "board may appoint" in subsection (3); and made minor changes in phraseology and punctuation.

**69-4822. Confidentiality of records.** Any information concerning sources of pollution which is furnished to the board or department or which is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator of a source of pollution which would, if disclosed, tend to weaken his competitive position shall be confidential unless he expressly agrees to its publication or availability to the general public or unless such information is introduced as evidence in a hearing before the board. Any information not intended to be public when submitted to the board or department shall be submitted in writing and clearly marked as confidential. The data describing physical and chemical characteristics of a waste discharged to state waters shall not be considered confidential; except that the party supplying the information to the board may apply to the board for confidential status for the information so supplied, and the board shall determine that the disclosure of said information is in the public interest prior to the disclosure to the public of said information. The board may use any information in compiling or publishing analyses or summaries relating to water pollution, if such analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information which is otherwise made confidential by this section.

**History:** En. Sec. 16, Ch. 21, L. 1971.

**69-4823. Penalties for violation of provisions, rule, permit, effluent standard, or order—purpose and construction of chapter.** (1) A person who violates a rule, permit, effluent standard, or order issued under the provisions of this act shall be guilty of an offense and subject to a civil penalty not to exceed ten thousand dollars (\$10,000). Each day of violation constitutes a separate offense.

(2) A person who willfully violates section 69-4806, R. C. M. 1947, or any pretreatment standard established pursuant to this act is guilty of an offense and subject to a fine not to exceed twenty-five thousand dollars (\$25,000) per day of violation or by imprisonment for not more than one (1) year or both. Following an initial conviction under this subsection, subsequent convictions shall subject a person to a fine of not more than fifty thousand dollars (\$50,000) per day of violation, or imprisonment for not more than two (2) years, or both.

(3) Action under subsection (1) of this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy. The department shall institute and maintain any enforcement proceedings in the name of the state.

(4) A purpose of this chapter is to provide additional and cumulative remedies to prevent, abate, and control the pollution of state waters. This chapter does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does this chapter or an act done under it estop the state or a municipality or person as owners of water rights or otherwise in the exercise of their rights in

equity or under the common law or statutory law to suppress nuisances or to abate pollution.

(5) Fines collected shall be deposited to the state general fund.

(6) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under this act or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this act shall upon conviction be punished by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment for not more than six (6) months or both.

(7) In a civil action initiated by the department under this act, the department may ask for and the court is authorized to assess a violator for the cost of the investigation or monitoring survey which led to the establishment of the violation, and any expense incurred by the state in removing, correcting or terminating any of the adverse effects upon water quality resulting from the unauthorized discharge of pollutants.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974.

#### Amendments

The 1973 amendment deleted "any provision of this chapter other than section 16 of this act, or" before "any rule" near the beginning of subsection (1); substituted "civil penalty" for "fine" near the end of the first sentence of subsection (1); increased the maximum daily penalty specified in subsection (1) from \$1,000 to \$10,000; substituted the reference to section 69-4806 near the beginning of subsection (2) for a reference to section 69-4823; inserted "or any pretreatment standard established pursuant to this act" in the first sentence of subsection (2);

increased the maximum daily fine specified by the first sentence of subsection (2) from \$1,000 to \$25,000; added to the first sentence of subsection (2) the provision for imprisonment; added the second sentence to subsection (2); substituted "to the state general fund" at the end of subsection (5) for "to the credit of the department, to be used to alleviate pollution for which no person subject to action by the department or board is responsible"; added subsections (6) and (7); and made minor changes in phraseology.

The 1974 amendment substituted "department" for "board" in the second sentence of subsection (3) and made numerous minor changes in phraseology and punctuation.

**69-4824. Emergencies.** Notwithstanding any other provisions of this chapter, if the department finds that a person is committing or is about to commit an act in violation of this chapter or an order or rule issued under it which, if it occurs or continues, will cause substantial pollution the harmful effects of which will not be remedied immediately after the commission or cessation of the act, the department shall order such person to stop, avoid, or moderate the act so that the substantial injury will not occur. The order shall be effective immediately upon receipt by the person to whom it is directed, unless the department provides otherwise. Notice of the order shall conform to the requirements of section 13 (1) [69-4820 (1)] of this act so far as practicable; the notice shall indicate that the order is an emergency order. Upon issuing such an order, the department shall fix a place and time for a hearing before the board, not later than five (5) days thereafter, unless the person to whom the order is directed shall request a later time. The department may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. The hearing shall be conducted in the manner specified in section 13, subsections (4), (5), and (6) [69-4820 (4),

(5), (6)] of this act. As soon as practicable after the hearing, the board shall affirm, modify, or set aside the order of the department. The order of the board shall be accompanied by the statement specified in section 13 (6) [69-4820 (6)] of this act. An action for review of the order of the board may be initiated in the manner specified in section 15 [69-4821] of this act. The initiation of such an action or taking of an appeal shall not stay the effectiveness of the order, unless the court shall find that the board did not have reasonable cause to issue an order under this section.

**History:** En. Sec. 18, Ch. 21, L. 1971.

**69-4824.1. Additional emergency powers.** Notwithstanding any other provisions of this act, the department upon receipt of evidence that a pollution source or combination of sources is endangering the health, welfare, or livelihood of a person may bring suit in the district court of any county in which the defendant is located or resides or is doing business to enjoin the discharge of pollutants causing or contributing to the alleged pollution.

**History:** En. 69-4824.1 by Sec. 7, Ch. 506, L. 1973.

**69-4825. Injunctions.** The department may bring an action for an injunction against the continuation of an alleged violation which has been the basis of suspension or revocation of a permit by the department or against a person who fails to comply with an emergency order issued by the department under section 69-4824 or a final order of the board. The court to which the department applies for an injunction may issue a temporary injunction, if it finds that there is reasonable cause to believe that the allegations of the department are true, and it may issue a temporary restraining order pending action on the temporary injunction.

**History:** En. Sec. 19, Ch. 21, L. 1971; amd. Sec. 68, Ch. 349, L. 1974.

partment" for "board" in three places and made minor changes in phraseology and punctuation.

#### **Amendments**

The 1974 amendment substituted "de-

**69-4826. Action by other parties.** A person, association, corporation, or agency of the state or federal government may apply to the department protesting a violation of this chapter. The department shall make an investigation and make a written report to the person, association, corporation, or agency which made the protest.

**History:** En. Sec. 20, Ch. 21, L. 1971; amd. Sec. 69, Ch. 349, L. 1974.

tence; deleted a second sentence which read "The board shall thereupon direct the department to investigate the alleged violation"; and made minor changes in phraseology and punctuation.

#### **Amendments**

The 1974 amendment substituted "department" for "board" in the first sen-

**69-4827. Co-operation with the council, board, and department.** The council, board, and department may require the use of records of all state agencies and may seek the assistance of such agencies. State, county, and municipal officers and employees, including sanitarians and other employees of local department of health, shall co-operate with the council,



board and department, in furthering the purposes of this chapter, so far as is practicable and consistent with their other duties.

**History:** En. Sec. 21, Ch. 21, L. 1971.

**Repealing Clause**

Section 22 of Ch. 21, Laws 1971 read  
 "Sections 69-4803, 69-4807, 69-4808, 69-4809, 69-4815, 69-4816, 69-4817, 69-4818, and 69-4819, R. C. M. 1947, are repealed."

**Separability Clause**

Section 23 of Ch. 21, Laws 1971 read

"It is the intent of the legislative assembly that, if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

## CHAPTER 49—PUBLIC WATER SUPPLY

**Section**

69-4902. Definitions.

69-4903. Functions, powers, and duties of the board of health and environmental sciences.

69-4904. Powers and duties of the department of health and environmental sciences.

69-4907. Appeal from rule or standard—injunction to require compliance.

**69-4902. Definitions.** As used in this chapter, unless the context clearly indicates otherwise:

(1) "Contamination" means impairment of the quality of state waters by sewage or industrial wastes creating a hazard to human health;

(2) to (5) \* \* \* [Same as parent volume.]

(6) "Public water supply" means any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves ten (10) or more families, or twenty-five (25) or more persons on a regular and continuous basis;

(7) \* \* \* [Same as parent volume.]

**History:** En. Sec. 141, Ch. 197, L. 1967;  
 amd. Sec. 1, Ch. 67, L. 1974.

five (25) or more persons on a regular and continuous basis" at the end of subsection (6) and made a minor change in phraseology.

**Amendments**

The 1974 amendment added "or twenty-

**69-4903. Functions, powers, and duties of the board of health and environmental sciences.** The board of health and environmental sciences shall:

(1) Have general supervision over all state waters which are directly or indirectly being used by a person for a public water supply or domestic purposes, or as a source of ice;

(2) Adopt rules and standards and issue orders to prevent pollution and protect the quality of water and for the collection and analysis of samples of water used for drinking or domestic purposes, giving legal notice of the adoption by publication or posting, and by filing a copy in the office of the clerk of the municipality or county where the rule or standard is effective.

**History:** En. Sec. 142, Ch. 197, L. 1967;  
 amd. Sec. 70, Ch. 349, L. 1974.

of health and environmental sciences" for "state board of health" in the caption and in the introductory phrase and made minor changes in phraseology and punctuation.

**Amendments**

The 1974 amendment substituted "board

**69-4904. Powers and duties of the department of health and environmental sciences.** The department of health and environmental sciences shall:

(1) Upon complaint to the department, or to the mayor or health officer of a municipality or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply, and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(2) Have waters examined to determine their purity and the possibility that they may endanger public health;

(3) Consult and advise authorities of cities and towns, and persons having or about to construct systems for water supply, drainage, waste water, and sewage as to the most appropriate source of water supply and the best method of assuring its purity;

(4) Advise persons as to the best method of purifying and disposing of their drainage, sewage, or waste water with reference to the existing and future needs of other persons and to prevent pollution;

(5) Consult with persons engaged in or intending to engage in manufacturing or other business whose drainage, or sewage may tend to pollute waters as to the best method of preventing pollution;

(6) Fix fees for services rendered in analyzing water and inspections to cover costs of the service and deposit receipts in the general fund;

(7) Establish and maintain experiment stations and conduct experiments to study the best methods of purifying water, drainage, waste water, sewage, and industrial waste to prevent pollution, including investigation of methods used in other states;

(8) Enter on premises at reasonable times to determine sources of pollution or danger to water supplies and whether rules and standards of the board are being obeyed;

(9) Notify the attorney general of violations of laws on pollution of state waters.

**History:** En. Sec. 143, Ch. 197, L. 1967; amd. Sec. 71, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment substituted "department of health and environmental sci-

ences" for "state department of health" in the caption and in the introduction; deleted "with approval of the state board" at the beginning of subdivision (6); and made minor changes in phraseology and punctuation.

**69-4907. Appeal from rule or standard—injunction to require compliance.** A person aggrieved by a rule or standard of the board may appeal to the district court. While the appeal is pending, the rule or standard of the board is in force. The department may request an injunction from the district court to require compliance with rules and standards.

**History:** En. Sec. 146, Ch. 197, L. 1967; amd. Sec. 72, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment substituted "board"

for "state board" in the first and second sentences; substituted "department" for "state board" in the final sentence; and made a minor change in phraseology.

## CHAPTER 50—SANITATION IN SUBDIVISIONS

## Section

- 69-5001. Public policy of the state.
- 69-5002. Definitions.
- 69-5003. Filing of map or plat with county clerk and recorder.
- 69-5005. Rules for administration and enforcement of chapter.
- 69-5006. Request for hearing.
- 69-5007. Enforcement.
- 69-5008. Penalties.
- 69-5009. Records of state and other agencies.

**69-5001. Public policy of the state.** It is the public policy of this state to extend present laws controlling water supply, sewage disposal, and solid waste disposal to include individual wells affected by adjoining sewage disposal and individual sewage systems to protect the quality and potability of water for public water supplies and domestic uses; and to protect the quality of water for other beneficial uses, including uses relating to agriculture, industry, recreation and wildlife.

**History:** En. Sec. 148, Ch. 197, L. 1967; amended. Sec. 1, Ch. 509, L. 1973.

erence to solid waste disposal; and added the final two clauses, beginning with "to protect the quality and potability."

**Amendments**

The 1973 amendment inserted the ref-

**69-5002. Definitions.** As used in this chapter unless the context clearly indicates otherwise the following words or phrases shall have the following meanings:

(1) "Subdivision" means the division of land, or land so divided, into two (2) or more parcels, whether contiguous or not, any of which is ten (10) acres or less, exclusive of public roadways, in size, without regard to the method of description thereof, in order that the title or possession of the parcels or any interest therein may be sold, rented, leased, or otherwise conveyed either immediately or in the future, and shall include any resubdivision of land; and shall further include any condominium or areas providing multiple space for camping trailers, house trailers or mobile homes; provided further that a division of land is a subdivision when the division creates a second or any subsequent parcel for the purpose of sale, rent, lease, or other conveyance from a tract of land held in single or undivided ownership on July 1, 1973, where any of the parcels segregated from the original tract is ten (10) acres or less, exclusive of public roadways, in size, without regard to the method of description thereof. The plat of a subdivision so created shall show all of the parcels segregated from the original tract whether contiguous or not.

(a) "Subdivision" shall include any condominium or areas providing multiple space for camping trailers, house trailers, or mobile homes, regardless of the size of the parcel of land upon which the same is situated.

(2) "Board" means the board of health and environmental sciences.

(3) "Department" means department of health and environmental sciences.

(4) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter or building requiring facilities for the supply of wa-



ter or the disposition of sewage or solid waste until the department has approved plans for those facilities.

(5) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste.

(6) "Solid wastes" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

**History:** En. Sec. 149, Ch. 197, L. 1967;  
amd. Sec. 2, Ch. 509, L. 1973.

**Amendments**

The 1973 amendment completely rewrote this section, including subdivision (1); and added subdivisions (2) through (6).

**69-5003. Filing of map or plat with county clerk and recorder.** (1) A person may not file a subdivision plat with a county clerk and recorder, make disposition of any lot within a subdivision, erect any building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent building in a subdivision when the status of the subdivision is conditional; and a county clerk and recorder may not accept a subdivision plat for filing until:

(a) the person wishing to file the plat has obtained approval of the local health officer having jurisdiction and has filed the approval with the department; and

(b) the department has indicated by stamp or certificate, that it has approved the plat and plans and specifications and that the subdivision is subject to no sanitary restriction.

(2) A person may not construct or use any facilities which deviate from the plans and specifications filed with the department until the department has approved the deviation.

**History:** En. Sec. 150, Ch. 197, L. 1967;  
amd. Sec. 4, Ch. 509, L. 1973.

**Amendments**

The 1973 amendment completely rewrote this section. For prior law, see parent volume.

**69-5005. Rules for administration and enforcement of chapter.** (1) The department shall adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this chapter.

(2) The rules and standards shall provide the basis for approving subdivision plats for various types of water, sewage facilities, and solid waste disposal, both public and private, and shall be related to size of lots, contour of land, porosity of soil, ground water level, distance from lakes, streams, and wells, type and construction of private water and sewage facilities, and other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) The rules shall further provide for:

(a) the furnishing to the department of a copy of the plat and other documentation showing the layout or plan of development, including:

(i) total development area,

(ii) total number of proposed dwelling units;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) standards and technical procedures applicable to storm drainage plans and related designs, in order to ensure proper drainage ways;

(e) standards and technical procedures applicable to sanitary sewer plans and designs, including soil percolation testing and required percolation rates and site design standards for on-lot sewage disposal systems when applicable;

(f) standards and technical procedures applicable to water systems;

(g) standards and technical procedures applicable to solid waste disposal;

(h) requiring evidence to establish that, if a public sewage disposal system is proposed, provision has been made for the system and, if other methods of sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations which are in effect at the time of submission of the preliminary or final plan or plat.

**History:** En. Sec. 152, Ch. 197, L. 1967; amd. Sec. 3, Ch. 509, L. 1973.

#### Amendments

The 1973 amendment divided the section into subsections (1) and (2); substituted "department" for "state board" at the beginning of subsection (1); substituted "adopt reasonable rules" for

"make rules" in subsection (1); inserted the reference to solid waste disposal in subsection (2); inserted "distance from lakes, streams, and wells" in subsection (2); added "and the quality of life for uses relating to agriculture, industry, recreation, and wildlife" at the end of subsection (2); added subsection (3); and made minor changes in phraseology.

**69-5006. Request for hearing.** Upon denial of approval of subdivision plans and specifications relating to environmental health facilities the person who is aggrieved by such denial may request a hearing before the board. Such hearings will be held pursuant to the Montana Administrative Procedure Act [82-4201 to 82-4225].

**History:** En. Sec. 5, Ch. 509, L. 1973.

#### Title of Act

An act to amend sections 69-5001, 69-5002, 69-5003 and 69-5005, R. C. M. 1947, by broadening the statement of public policy to include solid waste disposal and to refer to quality of water for all uses; revising the definition of subdivision; adding other definitions; revising the provisions for making rules and standards;

requiring approval of subdivision plats and plans and specifications by the department of health before filing with county clerk and recorder; providing for enforcement proceedings and hearings on alleged violations; providing remedies and sanctions relating to violations; providing for use of records and co-operation of other agencies; and providing for effect of invalidity of part of act.

**69-5007. Enforcement.** (1) If a written complaint alleging violation is made to the department, or if the department has reason to believe that a person has violated this act or any rule thereunder, and if a violation is found to exist, the department shall issue notice and hold a hearing pursuant to the Montana Administrative Procedure Act [82-4201 to 82-4225]. In addition to or instead of issuing an order, the department may initiate appropriate action for injunction or for recovery of penalty as provided in the act.

History: En. Sec. 6, Ch. 509, L. 1973.

**Compiler's Notes**

As enacted, this section contained no subsection (2).

**69-5008. Penalties.** (1) A person violating any provision of the act or any rule or order issued under this act is guilty of an offense and subject to a fine of not to exceed one thousand dollars (\$1,000).

(2) Action under subsection (1) of this section does not bar enforcement of this act or rules or orders issued under it by injunction or other appropriate remedy.

(3) The purpose of this section is to provide additional and cumulative remedies. This act does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does any provision of this chapter or any act done by virtue of it estop the state, any municipality or other subdivision of the state, or any person in the exercise of his rights in equity or under the common law or statutory law.

History: En. Sec. 7, Ch. 509, L. 1973.

**69-5009. Records of state and other agencies.** The department may require the use of records of all state, county and municipal agencies and may seek the assistance of those agencies. State, county and city officers and employees, including local health officers and sanitarians, shall co-operate with the board and the department in furthering the purposes of this act, so far as is practical and consistent with their own duties.

History: En. Sec. 8, Ch. 509, L. 1973.

**Separability Clause**

Section 9 of Ch. 509, Laws 1973 read "If a part of this act is invalid, all valid parts that are severable from the invalid

part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application."

## CHAPTER 51—CADAVERS

### Section

69-5104. Qualifications to perform autopsies—written report of findings.

### 69-5102. Procedure to procure cadavers.

**Compiler's Notes**

Section 105, Ch. 349, Laws 1974, substituted "department of health and environ-

mental sciences" in this section for "state department of health."

**69-5104. Qualifications to perform autopsies—written report of findings.** All autopsies of a human body shall be performed by a physician legally authorized to practice medicine in this state. Upon completion, the physician shall send a written report of his findings, including the cause of death if determined, to the physician attending the person at the time of death if other than the physician performing the autopsy, upon the request of any such hospital or skilled nursing facility, to the hospital or skilled nursing facility where the person died or where he was confined during his last illness to be retained as part of the permanent record of the hospital, or skilled nursing facility, to the next of



kin of the decedent or the representative of the decedent's estate upon request, and to such other person lawfully requesting the report.

**History:** En. Sec. 156, Ch. 197, L. 1967;  
amd. Sec. 1, Ch. 158, L. 1973.

second sentence the clause providing for reports to the attending physician and hospital facilities; and made minor changes in style.

#### Amendments

The 1973 amendment inserted in the

### CHAPTER 52—HOSPITALS AND HEALTH CARE FACILITIES

#### Section

- |            |  |
|------------|--|
| 69-5201.   | Definitions.   |
| 69-5203.1. | Unlawful use of term "nursing."  |
| 69-5210.   | Denial, suspension or revocation of license—procedure.   |
| 69-5213.   | Rules and standards for hospitals and hospital related facilities—adoption and publication by the department of health and environmental sciences. |
| 69-5220.   | Injunction.  |
| 69-5222.   | Definitions.   |
| 69-5223.   | Refusal to participate in sterilization.   |
| 69-5224.   | Severability.  |

**69-5201. Definitions.** As used in this chapter, unless the context clearly indicates otherwise:

(1) \* \* \* [Same as 1973 Supplement.]

(2) "Hospital related facility" means a facility licensed by the department of health and environmental sciences to provide any or all of the following: diagnosis; treatment; medical or nursing care or medically related rehabilitation services. Such facilities include, but are not limited to, outpatient facilities, public health centers, rehabilitation facilities, long-term care facilities, infirmaries, mental health and mental retardation institutions, alcohol and drug dependency centers and half-way houses. A health care facility in order to be licensed as a "hospital related facility" shall be in compliance with the regulations, for the specific category of facility, as promulgated and adopted by the state department of health and environmental sciences.

(a) "Outpatient facility" means a place, located in or apart from a hospital, which provides to ambulatory patients not requiring hospitalization the services of persons licensed to practice medicine or dentistry in the state of Montana, and which makes provisions for its patients to receive a reasonably full range of physical or mental diagnostic and treatment services.

(i) "Outpatient facility—A" is operated as an organizational component of a hospital and may establish observation beds. "Observation beds" are those beds established for use by an outpatient recovering from minor surgery or other treatment and will be occupied for a period of time not in excess of six (6) hours.

(ii) "Outpatient facility—B" is operated apart from a hospital and may not include observation beds.

(b) "Public health centers" means a publicly owned facility utilized by a local health unit for the provision of public health services, including related public facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers.

(c) "Rehabilitation facility" means a facility providing community service which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program under competent professional supervision including: medical services and evaluation; and psychological, social and vocational services and evaluation.

(d) "Long-term care facility" means a place which provides skilled nursing care to a total of two (2) or more persons or personal care to more than three (3) persons, who by reason of illness or disability are unable to properly care for themselves and are not related to the owner or administrator by blood or marriage, and may be defined as follows:

(i) "Skilled nursing facilities" are establishments furnishing continuous skilled nursing care and related services twenty-four (24) hours a day.

(ii) "Intermediate care facilities—A" are establishments furnishing limited skilled nursing care and personal care.

(iii) "Intermediate care facilities—B" are establishments providing only personal care and services to residents.

(iv) "Combination facilities" are establishments providing two (2) or more of the following services: skilled nursing care and intermediate care—A and/or B.

(v) Hotels, motels, boarding houses, rooming houses, or similar accommodations providing for transients, students, or persons not requiring institutional health care are not considered to be long-term care facilities.

(e) "Infirmiry" means a facility located in a university, college, government institution, or industry, for the treatment of the sick or injured.

(i) "Infirmiry—A" provides outpatient and inpatient care.

(ii) "Infirmiry—B" provides outpatient care only.

(3) "Person" means any individual, firm, partnership, association or corporation, or governmental unit.

(4) "Governmental unit" means the state, a state agency, any county, municipality, political subdivision of the state or an agency of any political subdivision.

(5) "Resident" means a person who is in a long-term care facility as a patient or for personal care.

(6) "Health care facility" means a hospital, hospital related facility or long-term care facility.

**History:** En. Sec. 159, Ch. 197, L. 1967; amd. Sec. 1, Ch. 290, L. 1969; amd. Sec. 1, Ch. 197, L. 1971; amd. Sec. 1, Ch. 448, L. 1973; amd. Sec. 1, Ch. 150, L. 1974.

of "intermediate care facilities" and made changes in phraseology and style.

The 1973 amendment completely rewrote this section supplying definitions for new terms.

The 1974 amendment substituted "more than three (3) persons" for "more than two (2) persons" in subdivision (2)(d).

#### Amendments

The 1971 amendment inserted definitions

### 69-5203. License required—duration—transfer prohibited—display.

#### Compiler's Notes

Section 105, Ch. 349, Laws 1974, substituted "department of health and environ-

mental sciences" in this section for "state department of health."

**69-5203.1. Unlawful use of term "nursing."** It is unlawful for any facility, operating in this state, to use the word "nursing" in its name, signs, advertisements, etc., unless that facility does, in fact, provide twenty-four (24) hour nursing care by licensed nurses.

**History:** En. 69-5203.1 by Sec. 2, Ch. 448, L. 1973.

**Title of Act**

An act to revise chapter 52 of Title 69 by broadening the provisions of and redefining the terms used under the section

of chapter entitled "definitions"; providing a new section in the chapter with respect to unlawful use of term in connection with name, signs and advertisements of facilities; revising the provisions for making rules; and amending sections 69-5201 and 69-5213, R. C. M. 1947.

**69-5205. Application for license—procedure.**

**Compiler's Notes**

Section 107, Ch. 349, Laws 1974, substituted

"department" in this section for "state board of health."

**69-5207, 69-5208.**

**Compiler's Notes**

Section 107, Ch. 349, Laws 1974, substituted

"department" in these sections for "state board."

**69-5210. Denial, suspension or revocation of license—procedure.** (1) A license may not be denied, suspended, or revoked without notice and an opportunity for a hearing before the board.

(2) Notice shall be given the applicant or licensee of a date, not less than fifteen (15) days after mailing or service, for a hearing before the board;

(3) The decision of the board is final thirty (30) days after it is mailed or served unless the applicant or licensee commences an action in the district court to appeal the decision. An appeal shall be in the district court where the facility is located or will be located.

**History:** En. Sec. 168, Ch. 197, L. 1967; amd. Sec. 73, Ch. 349, L. 1974.

**Amendments**

The 1974 amendment deleted provisions

specifying the procedure at the hearing by the board on denial, suspension or revocation of a license; added the second sentence to subsection (3); and made changes in phraseology, punctuation, and style.

**69-5211. Repealed.**

**Repeal**

Section 69-5211 (Sec. 169, Ch. 197, L. 1967), relating to review by the district court of a decision of the state board and

appeal of the decision of the district court, was repealed by Sec. 113, Ch. 349, Laws of 1974.

**69-5212. Alteration or addition to facility, etc.**

**Compiler's Notes**

Section 107, Ch. 349, Laws 1974, substituted

"department" in this section for "state board."

**69-5213. Rules and standards for hospitals and hospital related facilities—adoption and publication by the department of health and environmental sciences.** (1) The department shall promulgate, adopt and publish rules and minimum standards for licensure of all hospitals and hospital related facilities.

(2) Rules relating to building, equipment and fire and life safety shall be covered by the state building code.



(3) The department shall extend a reasonable time for compliance with rules after adoption.

**History:** En. Sec. 171, Ch. 197, L. 1967; amd. Sec. 22, Ch. 366, L. 1969; amd. Sec. 3, Ch. 448, L. 1973; amd. Sec. 74, Ch. 349, L. 1974.

#### Amendments

The 1973 amendment completely re-

wrote subsections (1) and (4) (now (2)); and deleted former subsections (2) and (3). For prior law, see parent volume.

The 1974 amendment added subsection (3).

### 69-5214 to 69-5216. Repealed.

#### Repeal

Sections 69-5214 to 69-5216 (Secs. 172 to 174, Ch. 197, L. 1967; Sec. 23, Ch. 366, L. 1969), relating to the appointment, mem-

bers, and duties of the hospital and long-term care facility advisory council, were repealed by Sec. 113, Ch. 349, Laws of 1974.

### 69-5217. Discrimination among patients of physicians prohibited, etc.

#### Compiler's Notes

Section 107, Ch. 349, Laws 1974, sub-

stituted "department" in this section for "state board."

### 69-5219. Records and reports required of licensees.

#### Compiler's Notes

Section 107, Ch. 349, Laws 1974, sub-

stituted "department" in this section for "state board" and "board."

### 69-5219.1. Repealed.

#### Repeal

Section 69-5219.1 (Sec. 2, Ch. 290, L. 1969), relating to annual registration of

facilities with the state department of health, was repealed by Sec. 1, Ch. 335, Laws 1973.

**69-5220. Injunction.** The department, on advice of the attorney general, may maintain an action for injunction or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a facility which is endangering health and welfare.

**History:** En. Sec. 178, Ch. 197, L. 1967; amd. Sec. 75, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment deleted "state

board or" before "department" at the beginning of the section and made a minor change in punctuation.

### 69-5222. Definitions. As used in this act:

(1) "Sterilization" means the performance of, or assistance or participation in the performance of, or submission to, an act or operation intended to eliminate an individual's reproductive capacity.

(2) "Person" includes one or more individuals, partnerships, associations, and corporations.

**History:** En. 69-5222 by Sec. 1, Ch. 247, L. 1974.

#### Title of Act

An act declaring the right to refuse to

participate in a sterilization operation; providing penalties and remedies; and an effective date.

**69-5223. Refusal to participate in sterilization.** (1) No private hospital or health care facility shall be required contrary to the religious or moral tenets or the stated religious beliefs or moral convictions of such

hospital or facility as stated by its governing body or board to admit any person for the purpose of sterilization or to permit the use of its facilities for such purpose. Such refusal shall not give rise to liability of such hospital or health care facility, or any personnel or agent or governing board thereof, to any person for damages allegedly arising from such refusal, nor be the basis for any discriminatory, disciplinary, or other recriminatory action against such hospital or health care facility, or any personnel, agent, or governing board thereof.

(2) All persons shall have the right to refuse to advise concerning, perform, assist, or participate in sterilization because of religious beliefs or moral convictions. If requested by any hospital or health care facility, or person desiring sterilization, such refusal shall be in writing signed by the person refusing, but may refer generally to the grounds of "religious beliefs and moral convictions." The refusal of any person to advise concerning, perform, assist, or participate in sterilization, shall not be a consideration in respect of staff privileges of any hospital or health care facility, nor a basis for any discriminatory, disciplinary, or other recriminatory action against such person, nor shall such person be liable to any person for damages allegedly arising from refusal.

(3) It shall be unlawful to interfere or attempt to interfere with the right of refusal authorized by this section, whether by duress, coercion, or any other means. The person injured thereby shall be entitled to injunctive relief, when appropriate, and shall further be entitled to monetary damages for injuries suffered.

(4) Such refusal by any hospital or health care facility or person shall not be grounds for loss of any privileges or immunities to which the granting of consent may otherwise be a condition precedent, or for the loss of any public benefits.

History: En. 69-5223 by Sec. 2, Ch. 247,  
L. 1974.

**69-5224. Severability.** It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all the valid applications that are severable from the invalid applications.

History: En. 69-5224 by Sec. 3, Ch. 247, the act should be in effect from and after  
L. 1974. its passage and approval. Approved March  
21, 1974.

**Effective Date**

Section 4 of Ch. 247, Laws 1974 provided

**CHAPTER 53—HOSPITALS, MEDICAL AND RELATED FACILITY  
SURVEY AND CONSTRUCTION**

**Section**

- 69-5301. Definitions.
- 69-5302. Department as principal state agency for hospital construction—contracts with federal government.
- 69-5303. Powers and duties of department.
- 69-5305. Submission of hospital construction plans to federal agencies—federal funds, use and disposition—inspection of projects—consultants' contracts.
- 69-5307. Minimum standards for maintenance and operation of hospitals, medical, and related facilities.

**69-5301. Definitions.** Unless the context requires otherwise, in this chapter:

(1) to (6) \* \* \* [Same as parent volume.]

**History:** En. Sec. 180, Ch. 197, L. 1967; **Amendments**  
amd. Sec. 76, Ch. 349, L. 1974.

The 1974 amendment deleted a definition of "council" and made minor changes in phraseology.

**69-5302. Department as principal state agency for hospital construction—contracts with federal government.** The department of health and environmental sciences is the principal state agency for establishing and administering a state-wide plan for construction, modernization, alteration, equipment, maintenance, or operation of a hospital, medical, or related facility for provision of care, treatment, diagnosis, rehabilitation, training, or related service. The department may enter into contracts and agreements with agencies of the federal government to secure the benefit of federal programs to provide adequate medical and related facilities and services.

**History:** En. Sec. 181, Ch. 197, L. 1967;  
amd. Sec. 77, Ch. 349, L. 1974.

#### **Amendments**

The 1974 amendment substituted "Department" for "State department of health" in the caption and in the second sentence; substituted "department of

health and environmental sciences" for "state department of health" at the beginning of the section; deleted "With approval of the state board of health, the executive officer of" at the beginning of the second sentence; and made minor changes in phraseology and punctuation.

**69-5303. Powers and duties of department.** The department shall:

- (1) Inventory existing hospitals, medical, and related facilities;
- (2) Survey the need for construction or alteration of hospitals;
- (3) Develop and administer a state plan for the construction and alteration of public and other nonprofit hospitals, medical, and related facilities;
- (4) If desirable, enter into agreements for the utilization of facilities and services of other departments, agencies, and institutions, public or private;
- (5) Accept and deposit with the state treasurer and spend any grant, gift, or contribution made to meet costs of carrying out this act.

**History:** En. Sec. 182, Ch. 197, L. 1967;  
amd. Sec. 78, Ch. 349, L. 1974.

partment" for "state department of health" in the caption and made minor changes in phraseology and punctuation.

#### **Amendments**

The 1974 amendment substituted "de-

**69-5304. Rules for administration of this chapter, etc.**

#### **Compiler's Notes**

Section 107, Ch. 349, Laws 1974, sub-

stituted "department" in this section for "state board."

**69-5305. Submission of hospital construction plans to federal agencies—federal funds, use and disposition—inspection of projects—consultants' contracts.** The department shall:

- (1) Prepare and review a construction program in accordance with federal requirements that will provide adequate hospital, medical, and related facilities to people in the state providing, as far as possible, for distribution



throughout the state to make all types of services reasonably acceptable to all persons;

(2) Submit to federal agencies state plans including those for the hospital, medical, and related facilities construction program and modifications of it providing for the establishment and operation of hospital, medical, and related facilities construction activities in accordance with federal requirements;

(3) Make application to the appropriate federal agency for funds to assist in carrying out the survey and planning activities. Federal funds shall be deposited in the state treasury and used only for the purposes specified by law. Money which is not spent for those purposes shall be repaid to the federal government;

(4) After approval of a plan by the appropriate federal agency, publish a description in newspapers having general circulation throughout the state, and make the plan available upon request to all persons or organizations;

(5) Inspect construction or alteration projects approved by the appropriate federal agency and, if satisfactory, certify that work has been performed on the project or purchases made in accordance with approved plans and specifications, and that payment of federal funds is due to the applicant;

(6) Require reports, and make inspections and investigations, as necessary or required by the federal agency;

(7) Contract with consultants for services which are performed on a part-time or fee-for-service basis not involving administrative duties.

History: En. Sec. 184, Ch. 197, L. 1967; amd. Sec. 79, Ch. 349, L. 1974.      proval of the state board" at the beginning of the section and made minor changes in phraseology and punctuation.

**Amendments**

The 1974 amendment deleted "With ap-

**69-5306. Publicity as to plans before they are submitted, etc.**

Compiler's Notes      stituted "department" in this section for  
Section 107, Ch. 349, Laws 1974, sub-      "state board."

**69-5307. Minimum standards for maintenance and operation of hospitals, medical, and related facilities.** The department shall prescribe minimum standards for the maintenance and operation of hospitals, medical, and related facilities receiving federal aid for construction under the state plan.

History: En. Sec. 186, Ch. 197, L. 1967; amd. Sec. 80, Ch. 349, L. 1974.      sultation with the council" at the beginning of the section; substituted "department" for "state board"; and made minor changes in punctuation.

**Amendments**

The 1974 amendment deleted "After con-

**69-5308. State plan.**

Compiler's Notes      stituted "department" in this section for  
Section 107, Ch. 349, Laws 1974, sub-      "state board."

**69-5310, 69-5311.**

Compiler's Notes      sections for "state board" and "executive  
Sections 107 and 111, Ch. 349, Laws 1974,      officer."  
substituted "department" throughout these

## CHAPTER 54—CESSPOOLS, SEPTIC TANKS, AND PRIVIES

## Section

- 69-5401. License required.  
 69-5402. Application for license—form and contents.  
 69-5403. Licenses—title—numbering—duration—transfer prohibited—fees, disposition.  
 69-5404. Vehicle of licensee—marking.  
 69-5405. Permit from local health officer—examination—fee.  
 69-5407. License not required of municipalities.  
 69-5408. Enforcement of chapter—violation of this chapter or order of a health officer is a misdemeanor.

**69-5401. License required.** No person, partnership, firm, or corporation shall engage in the business of cleaning cesspools, septic tanks or privies, and disposal of waste therefrom unless licensed by the department and the license validated by the health officer or local sanitarian in each county where business is to be conducted. The department may deny, suspend, or revoke a license for noncompliance with this chapter or rules adopted by the department.

**History:** En. Sec. 193, Ch. 197, L. 1967; amd. Sec. 1, Ch. 76, L. 1971; amd. Secs. 105, 107, Ch. 349, L. 1974.

each county where business is to be conducted" at the end of the first sentence; and made a minor change in phraseology.

The 1974 amendment substituted "department" for "state department of health" in two places and substituted "department" for "state board of health" at the end of the final sentence.

**Amendments**

The 1971 amendment inserted "and disposal of waste therefrom" in the first sentence; added "and the license validated by the health officer or local sanitarian in

**69-5402. Application for license—form and contents.** Application for a license is made to the department on application forms procured from the local health officer or sanitarian in the county of applicant residence. The application shall show:

- (1) the name in full, and if a partnership, the name of each partner;
- (2) place of business and the counties in which business is to be conducted;
- (3) and (4) \* \* \* [Same as parent volume.]
- (5) a statement that the applicant will comply with rules adopted by the department under this chapter;
- (6) \* \* \* [Same as parent volume.]

**History:** En. Sec. 194, Ch. 197, L. 1967; amd. Sec. 2, Ch. 76, L. 1971; amd. Secs. 107, 109, Ch. 349, L. 1974.

first sentence; added "and the counties in which business is to be conducted" at the end of subdivision (2); and made a minor change in phraseology.

The 1974 amendment substituted "department" for "state department of health" in the first sentence and substituted "department" for "state board" in subdivision (5).

**Amendments**

The 1971 amendment added "on application forms procured from the local health officer or sanitarian in the county of applicant residence" at the end of the

**69-5403. Licenses—title—numbering—duration—transfer prohibited—fees, disposition.** Licenses issued by the department shall be titled "Montana Sanitary Licensee," and numbered consecutively beginning with the number ten (10). Licenses expire on December 31 of each calendar year. Licenses are not transferable. The fee for each license is twenty-five dollars (\$25) payable at the time of application for license. Twenty dollars (\$20)

of the fee shall be deposited with the county treasurer in the county of licensee residence and five dollars (\$5) forwarded with the application to the department. The state fee shall be deposited in the state general fund. The county portion of the fee shall be used to defer cost of a sanitarian to enforce this act. The department shall return the license to county of licensee residence for issue.

**History:** En. Sec. 195, Ch. 197, L. 1967; amd. Sec. 3, Ch. 76, L. 1971; amd. Sec. 109, Ch. 349, L. 1974.

#### Amendments

The 1971 amendment increased the license fee from \$5.00 to \$25; added "payable at the time of application for license" at the end of the fourth sentence; sub-

stituted the fifth, sixth, seventh and eighth sentences for a sentence reading "Fees shall be deposited in the state general fund"; and made a minor change in phraseology.

The 1974 amendment substituted "department" for "state department of health" in three places.

**69-5404. Vehicle of licensee—marking.** Persons licensed shall paint on the side of each vehicle using the words "Montana Sanitary Licensee" and immediately under those words shall paint "License No. .... (insert number of license)." License numbers shall be at least one and one-half (1½) inches high and in a distinct color contrasting with the background.

**History:** En. Sec. 196, Ch. 197, L. 1967; amd. Sec. 4, Ch. 76, L. 1971.

#### Amendments

The 1971 amendment substituted "using" for "used" after "each vehicle."

**69-5405. Permit from local health officer—examination—fee.** Each person licensed under the provisions of this chapter who cleans a cesspool, septic tank, or privy shall secure a validation signature on the license from the local health officer or sanitarian, having jurisdiction in each county in which the business will be conducted. The license shall be invalid until said validation signature is affixed. The validation signature shall be affixed only after satisfactory evidence of the applicant's knowledge of sanitary principles, laws and ordinances; reliability in observing sanitary laws; and ability to clean the septic tank, cesspool or privy without endangering human health or safety and that the licensee has a permanent approved disposal site or is knowledgeable of the restrictions on disposal site locations.

**History:** En. Sec. 197, Ch. 197, L. 1967; amd. Sec. 5, Ch. 76, L. 1971.

#### Amendments

The 1971 amendment substituted "validation signature on the license" for "permit" in the first sentence; substituted "or sanitarian" for "or his authorized representative" after "local health officer" in the first sentence; added "in each county in which the business will be conducted" at the end of the first sentence; inserted a new second sentence; substituted "The validation signature shall be affixed" for "The permit shall be issued" at the beginning of the present third sentence;

substituted "evidence" for "examination" in the present third sentence; added "and that the licensee has a permanent approved disposal site or is knowledgeable of the restrictions on disposal site locations" at the end of the third sentence; deleted two final sentences reading "The permit shall contain the name of the applicant, date of cleaning, name and address of the owner of the cesspool, septic tank or privy, and the place and means of disposing of the waste. The person issuing the permit shall be paid a fee of one dollar (\$1.00)"; and made minor changes in phraseology and punctuation.

**69-5406. Rules for administration of chapter—adoption.**

#### Compiler's Notes

Section 107, Ch. 349, Laws 1974, sub-

stituted "department" in this section for "state board."



**69-5407. License not required of municipalities.** The license provisions of this chapter do not apply to any county or municipality or other local, state or federal governmental agency which desires to clean septic tanks, cesspools, or privies publicly owned or controlled by them. However, counties and municipalities or other local, state or federal governmental agencies shall comply with rules adopted by the department for cleaning cesspools, septic tanks, or privies, and disposal or wastes from cesspools, septic tanks, or privies.

**History:** En. Sec. 199, Ch. 197, L. 1967; amd. Sec. 6, Ch. 76, L. 1971; amd. Sec. 107, Ch. 349, L. 1974.

#### Amendments

The 1971 amendment inserted references to other local, state and federal government agencies in the first and second sen-

tences; added "and disposal or wastes from cesspools, septic tanks or privies" at the end of the section; and made a minor change in phraseology.

The 1974 amendment substituted "department" for "state board of health" in the second sentence.

**69-5408. Enforcement of chapter—violation of this chapter or order of a health officer is a misdemeanor.** State and local health officers or sanitarians, are responsible for the enforcement of this chapter. Any person who fails to comply with provisions of this chapter or orders of a health officer or sanitarian made under this chapter for the protection of human health is guilty of a misdemeanor. Upon conviction he shall be fined not more than one hundred dollars (\$100), imprisoned for not more than thirty (30) days, or both, for each offense. Fines collected shall be deposited in the general fund of the county in which the action is brought.

**History:** En. Sec. 200, Ch. 197, L. 1967; amd. Sec. 7, Ch. 76, L. 1971.

#### Effective Date

Section 8 of Ch. 76, Laws 1971 read: "This act is effective January 1, 1972."

#### Amendments

The 1971 amendment inserted references to sanitarians in two places after references to health officers.

## CHAPTER 55—PUBLIC SWIMMING POOLS AND BATHING PLACES

### 69-5503. Sanitarian—rules—adoption by department.

#### Compiler's Notes

Section 104, Ch. 349, Laws 1974, substituted "department of health and environ-

mental sciences" in this section for "state board of health."

### 69-5504. Sanitation—supervision by department.

#### Compiler's Notes

Section 109, Ch. 349, Laws 1974, sub-

stituted "department" in this section for "state department of health."

### 69-5505. Inspections by health authorities, etc.

#### Compiler's Notes

Section 107, Ch. 349, Laws 1974, substi-

tuted "department" throughout this section for "state board."

### 69-5510, 69-5511.

#### Compiler's Notes

Section 107, Ch. 349, Laws 1974, substi-

tuted "department" in these sections for "state board."

## CHAPTER 56—TOURIST CAMPGROUNDS AND TRAILER COURTS

## Section

69-5601. Definitions.

69-5602. Rules—adoption by state board of health.

69-5603. License from state department of health required—inspections.

69-5604. Application for license—form and contents—license fee—duration of license.

69-5605. Inspection of grounds.

69-5606. Denial of application for or revocation of license—request for hearing before the board, notice.

69-5607. Violations and penalty—disposition of fines.

**69-5601. Definitions.** As used in this chapter, unless the context clearly indicates otherwise:

(1) "Tourist campground" means a place used for public camping primarily by automobile tourists where persons can camp or secure tents or park individual trailers or truck trailers for camping and sleeping purposes.

(2) "Trailer court" means a parcel of land offered to the public and usually designated a trailer court, trailer park or mobile home park upon which two (2) or more spaces are occupied or intended for occupancy by trailers or mobile homes for nonrecreational dwelling purposes.

(3) "Board" means the state board of health and environmental sciences.

(4) "Department" means the state department of health and environmental sciences.

(5) "Person" includes an individual, partnership, corporation, association, or other entity engaged in the business of operating or owning or offering the services of a tourist campground or trailer court.

**History:** En. Sec. 212, Ch. 197, L. 1967;  
amd. Sec. 1, Ch. 383, L. 1973.

term includes places" at the beginning of the former second sentence; substituted "tents" in subdivision (1) for "cabins or tents, trailer courts, and similar public places"; added "or park individual trailers or truck trailers for camping and sleeping purposes" at the end of subdivision (1); and added subdivisions (2) to (5).

**Amendments**

The 1973 amendment divided the former section into the preliminary clause and subdivision (1); combined two sentences of subdivision (1) into one by deleting "The

**69-5602. Rules—adoption by state board of health.** The department shall adopt rules for construction and operating tourist campgrounds and trailer courts to ensure sanitation and protect public health.

**History:** En. Sec. 213, Ch. 197, L. 1967;  
amd. Sec. 2, Ch. 383, L. 1973.

partment" for "state board of health"; and inserted "construction and" and "and trailer courts."

**Amendments**

The 1973 amendment substituted "de-

**69-5603. License from state department of health required—inspections.** A person operating a tourist campground or trailer court shall:

(1) obtain a license from the department;

(2) permit inspections by state, local health officers, sanitarians or other authorized persons at all reasonable times.

**History:** En. Sec. 214, Ch. 197, L. 1967;  
amd. Sec. 3, Ch. 383, L. 1973.

**Amendments**

The 1973 amendment inserted "or trailer court" in the preliminary clause; deleted

the former subdivision (2) requiring posting of state board of health rules; renumbered subdivision (3) as (2) and in-

serted "sanitarians or other authorized persons" in subdivision (2).

**69-5604. Application for license—form and contents—license fee—duration of license.** Application for a license is made to the department on forms, and containing information, required by the department. Each application shall be accompanied by a fee of ten dollars (\$10). Licenses expire on December 31 of the year in which they are issued. Fees collected by the department shall be deposited in the state general fund.

**History:** En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973.

#### Amendments

The 1973 amendment increased the application fee from five dollars to ten dollars and added the fourth sentence.

**69-5605. Inspection of grounds.** The department or local health officer or sanitarian shall:

(1) inspect tourist campgrounds and trailer courts during reasonable hours as necessary;

(2) supervise the inspection of tourist campgrounds or trailer courts by local health officers, sanitarians or other authorized persons as necessary.

**History:** En. Sec. 216, Ch. 197, L. 1967; amd. Sec. 5, Ch. 383, L. 1973.

#### Amendments

The 1973 amendment deleted former subsection (1) providing for denial or revocation of licenses; deleted the numerical designation for former subsection (2); in-

serted "or local health officer or sanitarian" in the preliminary clause; redesignated former subdivisions (2) (a) and (2) (b) as (1) and (2); inserted references to trailer courts in subdivisions (1) and (2); and deleted former subdivision (2) (c), providing for a \$5 license fee.

**69-5606. Denial of application for or revocation of license—request for hearing before the board, notice.** If the department denies an application for a license or revokes a license that has been issued, an applicant or licensee is entitled to a hearing before the board of health and environmental sciences to show cause why the action should not be taken. If a hearing is desired, the applicant or licensee shall notify the board in writing before the tenth day after notice of the denial or revocation is received.

**History:** En. Sec. 217, Ch. 197, L. 1967; amd. Sec. 81, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment substituted "board" for "state board" in the caption; substituted "board of health and environmental

sciences" for "state board" in the first sentence; substituted "board" for "department" in the second sentence; substituted "tenth day" for "sixth day" in the second sentence; and made minor changes in punctuation.

**69-5607. Violations and penalty—disposition of fines.** A person violating provisions of this act, or rules adopted by the department, is guilty of a misdemeanor. On conviction he shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100). Fines shall be paid to the county treasurer of the county in which the tourist campground or trailer court is located. The county treasurer shall send all fines collected to the state treasurer for deposit in the state general fund.

**History:** En. Sec. 218, Ch. 197, L. 1967; amd. Sec. 6, Ch. 383, L. 1973.

#### Amendments

The 1973 amendment substituted "department" for "state board" in the first



sentence; inserted "or trailer court" in the second sentence; and made minor changes in style.

"It is the legislative intent that if any section, subsection, sentence, clause or provision of the act is held invalid, the remainder of the act shall not be affected."

#### Separability Clause

Section 7 of Ch. 383, Laws 1973 read

### CHAPTER 57—GENERAL PENALTY

#### Section

69-5701. Violations of public health laws or rules of board or department.

**69-5701. Violations of public health laws or rules of board or department.** Anyone who violates a rule adopted by the board of health and environmental sciences or the department of health and environmental sciences, for which no penalty is specified, is guilty of a misdemeanor.

**History:** En. Sec. 221, Ch. 197, L. 1967; amd. Sec. 82, Ch. 349, L. 1974.

tion which read: "Anyone who violates any provision of this act, or any rule adopted by the state board under the provisions of this act, for which no penalty is specified, is guilty of a misdemeanor."

#### Amendments

The 1974 amendment rewrote this sec-

### CHAPTER 58—CONTROL OF IONIZING RADIATION

#### Section

69-5804. State radiation control agency.

69-5812. Administration procedure and judicial review.

#### 69-5803. Definitions.

##### Compiler's Notes

Section 104, Ch. 349, Laws 1974, substituted "department of health and environ-

mental sciences" throughout this section for "board of health."

**69-5804. State radiation control agency.** (1) The department is the state radiation control agency.

(2) Under the laws of this state, the department may employ, compensate, and prescribe the powers and duties of the individuals which are necessary to carry out this act.

(3) The department may for the protection of the occupational and public health and safety:

(a) Develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing radiation.

(b) Develop programs and adopt rules with due regard for compatibility with federal programs for licensing and regulation of by-product, source, radioactive waste materials, and special nuclear materials, and other radioactive materials. These rules shall cover equipment and facilities, methods for transporting, handling and storage of radioactive materials, permissible levels of exposure, technical qualifications of personnel, required notification of accidents and other incidents involving radioactive materials, survey methods and results, methods of disposal of radioactive materials, posting and labeling of areas, and sources, and methods, and effectiveness of controlling individuals in posted and restricted areas.

(c) Adopt rules relating to control of other sources of ionizing radiation. These rules shall cover equipment and facilities, permissible levels of exposure to personnel, posting of areas, surveys, and records.

(d) Advise, consult, and co-operate with other agencies of the state, the federal government, other states, interstate agencies, political subdivisions, and with groups concerned with control of sources of ionizing radiation.

(e) Accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private.

(f) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations, relating to control of sources of ionizing radiation.

(g) Collect and disseminate information relating to control of sources of ionizing radiation, including:

(i) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(ii) Maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under this act and any administrative or judicial action pertaining thereto;

(iii) Maintenance of a file of all rules relating to regulation of sources of ionizing radiation, pending or adopted and proceedings thereon.

**History:** En. Sec. 4, Ch. 103, L. 1967;  
amd. Sec. 83, Ch. 349, L. 1974.

partment" for "board of health" in subsections (1), (2), and (3) and made numerous minor changes in phraseology, punctuation, and style.

#### **Amendments**

The 1974 amendment substituted "de-

### **69-5805. Repealed.**

#### **Repeal**

Section 69-5805 (Sec. 5, Ch. 108, L. 1967), relating to the radiation advisory

committee, was repealed by Sec. 113, Ch. 349, Laws of 1974.

### **69-5806 to 69-5810.**

#### **Compiler's Notes**

Section 107, Ch. 349, Laws 1974, substi-

tuted "department" throughout these sections for "board of health."

**69-5812. Administration procedure and judicial review.** (1) In a proceeding under this act for granting, suspending, revoking, or amending a license, or for determining compliance with, or granting exceptions from, rules adopted under this chapter, the board of health and environmental sciences shall first afford an opportunity for a hearing on the record upon the request of a person whose interest may be affected by the proceeding, and shall admit the person as a party to the proceeding.

(2) When the department finds that an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue a rule or order reciting the existence of the emergency and requiring that such action be taken as considered necessary

to meet the emergency. Notwithstanding any provision of this act to the contrary, the rule or order is effective immediately. A person to whom the rule or order is directed shall comply with it immediately, but on application to the board, shall be afforded a prompt hearing. On the basis of the hearing the emergency rule or order shall be continued, modified, or revoked by the board within thirty (30) days after the hearing or when the emergency no longer exists.

History: En. Sec. 12, Ch. 108, L. 1967;  
amd. Sec. 84, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment substituted "board of health and environmental sciences" for "board of health" in subsection (1); substituted "department" for "board of

health" in two places in the first sentence of subsection (2); substituted "board" for "board of health" in the second sentence of subsection (2); inserted "by the board" following "or revoked" in the second sentence of subsection (2); and made minor changes in phraseology and punctuation.

### 69-5813, 69-5814.

#### Compiler's Notes

Section 107, Ch. 349, Laws 1974, sub-

stituted "department" in these sections for "board of health."

### 69-5816. Penalties.

#### Compiler's Notes

Section 107, Ch. 349, Laws 1974, substi-

tuted "department" throughout this section for "board of health."

## CHAPTER 59—WATER TREATMENT PLANTS AND DISTRIBUTION SYSTEMS

### Section

69-5902. Definitions.

69-5903. Board to assist department—meetings and organization—examination of candidates for certification.

69-5906. Operator of treatment plant or distribution system to be certified—certification of operators certified by other agency.

69-5907. Issuance of operators' certificates—display—annual renewal—revocation—termination of employment—reinstatement of certificate.

69-5908. Application for operator's certificate—payment of fee—use of proceeds.

69-5909. Term of operator's certificate—renewal fee—suspension and revocation—reinstatement.

69-5910. Rules of board.

69-5911. Unlawful to operate treatment plant or distribution system without certified operator.

**69-5902. Definitions.** Unless the context requires otherwise, in this act:

(1) "Board" means the board of water and waste water operators provided for in section 82A-612.

(2) "Operator" means the person in direct responsible charge of the operation of a water treatment plant, water distribution system, or waste water treatment plant. Operators of plants or systems serving less than ten (10) families are exempt from this chapter.

(3) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(4) "Waste water treatment plant" means facilities designed to remove solids, bacteria, or other harmful constituents of sewage, industrial wastes, or other wastes and which discharges an effluent directly into this state's waters and which serves ten (10) or more families or serves an industry employing ten (10) or more persons.



(5) "Water supply system" means the system of pipes, structures, and facilities through which the water is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans and serves ten (10) or more families or serves an industry employing ten (10) or more persons.

(6) "Water treatment plant" means that portion of the water supply system which alters either the physical, chemical, or bacteriological quality of the water rendering it safe and palatable for human use.

(7) "Water distribution system" means that portion of the water supply system in which water is conveyed from the water treatment plant or other supply source to the premises of the consumer and which serves ten (10) or more families or supplies an industry employing ten (10) or more persons.

(8) "Certificate" means a certificate of competency issued by the department stating that the operator holding the certificate has met the requirements for the specified operator classification of the certification program.

(9) "Montana's waters" means all streams and lakes, including all rivers and lakes bordering on the state, wells, springs, irrigation systems, marshes, watercourses, waterways, drainage systems, and other bodies of water, surface and underground, natural or artificial, publicly or privately owned.

**History:** En. Sec. 2, Ch. 239, L. 1967; amd. Sec. 85, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment substituted "board of water and waste-water operators provided for in section 82A-612" for "board

of certification for water and waste-water operators" in subdivision (1); substituted the definition of "Department" for a definition of "Director" in subdivision (3); substituted "department" for "director" in subdivision (8); and made minor changes in phraseology and punctuation.

**69-5903. Board to assist department—meetings and organization—examination of candidates for certification.** (1) The board shall advise and assist the department in the administration of the certification program. The board shall serve as an advisory board to the department in actions relating to the qualifications of water and waste water treatment plant operators.

(2) Annually when new members are appointed to the board a chairman shall be elected at the next board meeting.

(3) The board shall hold at least one (1) examination each year for the purpose of examining candidates for certification at a time and place designated by the board. Those applicants whose competency is acceptable to the board shall be recommended to the department for certification. Additional meetings may be called by the chairman, or on written request of four (4) members of the board when necessary to carry out this chapter. Four (4) members constitute a quorum. The members of the board shall receive a fee of twenty dollars (\$20) per day while in session, plus the cost of actual and necessary expenses, including travel while discharging their official duties.

**History:** En. Sec. 3, Ch. 239, L. 1967; amd. Sec. 1, Ch. 306, L. 1971; amd. Sec. 86, Ch. 349, L. 1974.

#### Amendments

The 1971 amendment inserted the second sentence, attaching the certification board

to the state board of health, in subsection (1).

The 1974 amendment rewrote this section to delete specific provisions pertaining to the appointment of the board of cer-

tification by the governor and the qualifications and terms of the members, and a provision covering the examination of candidates for certification.

#### 69-5904, 69-5905.

##### Compiler's Notes

Section 111, Ch. 349, Laws 1974, substi-

tuted "department" in these sections for "director."

**69-5906. Operator of treatment plant or distribution system to be certified—certification of operators certified by other agency.** Water and waste water treatment plants and water distribution systems, whether publicly or privately owned, must be under the supervision of an operator whose competency is certified to by the department in a grade corresponding to the classification of that portion of the water or waste water supply system to be supervised. However, this chapter does not prevent a governmental agency, corporation, or individual from continuing to employ in this capacity a person in responsible charge of the operation of such works on July 1, 1967. Certificates of proper classification may be issued without examination to the person or persons certified by the governing board or owner to have been in responsible charge of the water and waste water plants and water distribution systems on the effective date of the act. A certificate so issued will be valid only in that plant. The board may consider for recommendation for certification the holder of a certificate issued by a governmental agency or equivalent certification board of another state, on presentation to the board of satisfactory evidence that the applicant is in responsible charge of works located in this state requiring a certified operator and that he has successfully passed an examination at least equivalent to that required under section 69-5903(3) and section 69-5905.

**History:** En. Sec. 6, Ch. 239, L. 1967; amd. Sec. 87, Ch. 349, L. 1974.

##### Amendments

The 1974 amendment deleted "One (1) year following the effective date of this act," at the beginning of the section; sub-

stituted "department" for "director" in the first sentence; added "on July 1, 1967" at the end of the second sentence; substituted "section 69-5903(3)" for "section 69-5903 (4)" near the end of the section; and made minor changes in phraseology and punctuation.

**69-5907. Issuance of operators' certificates—display—annual renewal—revocation—termination of employment—reinstatement of certificate.** The department shall issue certificates attesting to the competency of operators. The certificates shall include the classification of the works which the operator is qualified to supervise. The certificate shall be prominently displayed in the office of the operator.

(1) Certificates continue in effect unless revoked by the department, but remain the property of the department and the certificate shall so state. A certificate shall be renewed annually by payment of the proper fee.

(2) The department may revoke the certificate of an operator following a hearing by the department, when it is found that the operator has practiced fraud or deception; that reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or that the operator is incompetent or unable to properly perform his duties.



A person who has his certificate revoked by the department may appeal to the board for a rehearing within ten (10) days of notification by the department, after which time the revocation proceedings are no longer applicable and revocation of the certificate becomes final.

(3) Operators who terminate employment may retain their certificate for two (2) years, providing that all other requirements are met. After two (2) years, a certificate is automatically invalidated. Operators whose certificates are invalidated under this chapter may be issued new certificates of like classification provided appropriate proof of competency is presented to the board. Successful completion of an examination may be required at the discretion of the board.

**History:** En. Sec. 7, Ch. 239, L. 1967; amd. Sec. 88, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "director" in the first sen-

tence of the section and in six places in subsections (1) and (2); substituted "property of the department" for "property of the board" in the first sentence of subsection (1); and made minor changes in phraseology and punctuation.

**69-5908. Application for operator's certificate—payment of fee—use of proceeds.** A person desiring to engage in the operation of a water treatment plant, water distribution system, or waste water treatment plant shall first file an application with the department for a proper certificate. The department shall charge a fee, of the same amount as the license cost set forth in section 69-5909, for the filing of each application and shall not act on an application until the fee has been paid. Filing and certification fees shall be deposited with the state treasurer in the "Board of Water and Waste Water Operators Account" in the department earmarked revenue fund and shall be used to pay the expenses of the board and department under this chapter. Moneys may be invested in accordance with procedures of investment of state moneys. In granting the certificates, the department shall give due regard to the interest of this state in protecting the drinking water supplies and the quality of its water.

**History:** En. Sec. 8, Ch. 239, L. 1967; amd. Sec. 2, Ch. 306, L. 1971; amd. Sec. 89, Ch. 349, L. 1974.

#### Amendments

The 1971 amendment inserted "state department of health" in the third sentence; inserted the fourth sentence; and made a minor change in phraseology.

The 1974 amendment substituted "board" for "department" in the first, second, and

final sentences; substituted "Board of Water and Waste Water Operators Account" for "Water and Waste Water Operators Certification Examining Board Account" in the third sentence; substituted "department earmarked revenue fund" for "state department of health earmarked revenue fund" in the third sentence; inserted "and department" after "board" in the third sentence; and made minor changes in phraseology and punctuation.

**69-5909. Term of operator's certificate—renewal fee—suspension and revocation—reinstatement.** Certificates issued under this chapter shall be renewed annually before July 1. After the payment of the initial fee under section 69-5908, a certificate holder shall pay before July 1 of each certificate year a renewal fee according to the following schedule:

Class I—twenty dollars (\$20)

Class II—fifteen dollars (\$15)

Class III—ten dollars (\$10)



Class IV—five dollars (\$5)

Class V—three dollars (\$3)

A certificate issued after July 1 expires the following June 30. If a certificate holder does not apply for a renewal of his certificate before July 1 and remit to the department the necessary renewal fee, he shall have his certificate suspended by the board. If the certificate remains suspended for a period of more than thirty (30) days it shall be revoked by the board; however, the board, before this revocation, shall notify the certificate holder by certified mail at the address on the issued certificate of its intention to revoke, at least ten (10) days before the time set for action to be taken by the board on the certificate. A certificate once revoked may not be reinstated unless it appears that an injustice has occurred through error or omission or other fact or circumstances indicating to the board that the certificate holder was not guilty of negligence or laches. If a person whose certificate has been revoked through his own fault desires to continue as a water or waste water plant operator, he must make application to the department under section 69-5908. Successful completion of an examination may be required at the discretion of the board. Notice of suspension shall be given to certificate holder when the suspension occurs and to the proper official or owner of the treatment works or distribution system.

**History:** En. Sec. 9, Ch. 239, L. 1967; amd. Sec. 90, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment substituted "remit to the department" for "remit to the

board" in the first sentence following the schedule; substituted "application to the department" for "application to the board" near the end of the section; and made numerous minor changes in phraseology and punctuation.

**69-5910. Rules of board.** The board shall adopt rules necessary to carry out this chapter. Before the rules are effective, they shall be approved by the department. The rules shall include, but are not limited to, provisions establishing the basis for classification of treatment plants under section 69-5904, provisions establishing qualifications of applicants, procedures for examination of candidates, and other provisions necessary for the administration of this act.

**History:** En. Sec. 10, Ch. 239, L. 1967; amd. Sec. 3, Ch. 306, L. 1971; amd. Sec. 91, Ch. 349, L. 1974.

#### Amendments

The 1971 amendment inserted the second sentence.

The 1974 amendment deleted "and regulations" following "rules" in the caption and throughout the section; substituted "department" for "state board of health"

at the end of the second sentence; and made minor changes in phraseology and punctuation.

#### Separability Clause

Section 4 of Ch. 306, Laws 1971 read: "The provisions of this act shall be severable; and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held invalid, the remainder of this act shall continue in full force and effect."

**69-5911. Unlawful to operate treatment plant or distribution system without certified operator.** It is unlawful for a person, firm, or corporation both municipal and private, operating a waste water treatment plant, water treatment plant or water distribution system to operate it unless the competency of the operator is certified to by the department under this act. Furthermore, it is unlawful for a person to perform the duties of an operator without being certified under this act.

History: En. Sec. 11, Ch. 239, L. 1967; amd. Sec. 92, Ch. 349, L. 1974.

#### Amendments

The 1974 amendment deleted "On or after one (1) year following the effective

date of this act" at the beginning of the section; substituted "department" for "director" near the end of the first sentence; and made minor changes in phraseology and punctuation.

### CHAPTER 60—REFUSE DISPOSAL DISTRICTS

#### Section

- 69-6002. Definitions.
- 69-6004. Action by city or town council—effect—notice.
- 69-6005. Written protest—hearing—effect.
- 69-6006. Jurisdiction to order improvements—passage of resolution—brief description and reference.
- 69-6007. Service fees—maintenance assessments—disposal fee.
- 69-6010. Powers and duties of board.
- 69-6012. Joint districts.
- 69-6013. Duty of county attorney—conflict of interest.

**69-6002. Definitions.** As used in this act unless the context indicates otherwise:

"Commissioners" means the board of county commissioners.

"Family residential unit" means the residence of a single family.

"Refuse" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

"Refuse disposal district" means an area established with definite boundaries for the purpose of collecting and disposing of all refuse created in said district.

"Board" means board of directors as provided for in section 69-6009, R. C. M., 1947, and section 4 [69-6012] of this act.

History: En. Sec. 2, Ch. 71, L. 1969; amd. Sec. 1, Ch. 136, L. 1971.

#### Amendments

The 1971 amendment added the definition of "board."

**69-6004. Action by city or town council—effect—notice.** (1) Upon passage of such resolution of intention, the commissioners shall transmit a copy of the same to the executive head of any incorporated city or town within the proposed district for consideration by such city or town council, and if the city or town council shall by resolution concur, in the resolution of the commissioners, a copy of the resolution of concurrence shall be transmitted to the commissioners. If the incorporated city or town council does not concur in the resolution of the commissioners, the commissioners shall have no authority to include said town or city in the district, but may continue to develop the district, but excluding said town or city.

(2) The commissioners must give notice of the passage of the resolution of intention and resolution of concurrence, if applicable, a notice describing the general characteristics of the collection system and estimated costs; designating the time and place where the commissioners will hear and pass upon protests made against the operation of the proposed district; and stating that a description of the boundaries for the proposed

district is included in the resolution on file in the county clerk's office. The notice shall be published in the newspaper published nearest to the place where the proposed district is to be created for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper; posted in three (3) public places within the boundaries of the proposed district; and a copy mailed by first class mail to every person, firm, or corporation having real property within the proposed district listed upon the last completed assessment list for county taxes the same day the notice is first published.

**History:** En. Sec. 4, Ch. 71, L. 1969; amd. Sec. 1, Ch. 293, L. 1973.

#### **Amendments**

The 1973 amendment divided the section into numbered subsections; rearranged

and rephrased the language in subsection (2); and added at the end of subsection (2) the clause providing for mailing notice to property owners on the assessment list.

**69-6005. Written protest—hearing—effect.** At any time within thirty (30) days after the date of the first publication of the notice provided in section 69-6004, any owner of property liable to be assessed for said service may make written protest against the proposed service. Such protest must be in writing and be delivered to the county clerk, who shall endorse thereon the date of the receipt by him. At the next regular meeting of the commissioners, after the expiration of the time within [which] such said protest may be so made, the commissioners shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, if the protest against the proposed service is made by the owners of more than fifty (50) per cent of the family residential units; each commercial and industrial service that is to be included in the collection system may be considered as a family residential unit for the purpose of determining per cent of protest; in the proposed district, no further proceedings shall be taken by the commissioners.

In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the city, county, and school districts, shall be considered the same as any other property in the district. The commissioners may include commercial and industrial establishments in said district. The commissioners may adjourn said hearings from time to time.

**History:** En. Sec. 5, Ch. 71, L. 1969; amd. Sec. 2, Ch. 293, L. 1973.

tice provided in section 69-6004" for "passage of the resolution of intention" in the first sentence of the first paragraph.

#### **Amendments**

The 1973 amendment substituted "no-

**69-6006. Jurisdiction to order improvements—passage of resolution—brief description and reference.** When no protests have been delivered to the county clerk within thirty (30) days after the date of the first publication of the notice provided in section 69-6004, or when a protest shall have been found by said commissioners to be insufficient, or shall have been overruled, immediately thereupon, the commissioners shall be deemed to have acquired jurisdiction to order improvements, but before ordering any of the said proposed improvements, the commissioners shall



pass a resolution creating the said refuse disposal district in accordance with the resolution of intention theretofore introduced and passed by the commissioners.

In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvement, it shall be sufficient to briefly describe the work of the refuse disposal district and to refer to the resolution of intention for further particulars.

**History:** En. Sec. 6, Ch. 71, L. 1969; amended in section 69-6004" for "of the passing of the resolution of intention" near the beginning of the first paragraph.  
amd. Sec. 3, Ch. 293, L. 1973.

#### Amendments

The 1973 amendment substituted "pro-

**69-6007. Service fees—maintenance assessments—disposal fee.** To defray the cost of maintenance and operation of said refuse disposal district, the board, shall establish a fee for service with approval of the county commissioners. This fee shall be assessed to all units in the district that are receiving a service for the purpose of maintenance and operation of said district. The fees shall be based upon a family residential unit, and fees for commercial and industrial accounts shall be based on the comparison with a typical residential unit as to volume and type of waste produced. In no case shall the fee for disposal service exceed one half ( $\frac{1}{2}$ ) the total fee for both collection and disposal services. The month the service begins the department of revenue or its agents shall ensure that the amount of this fee is placed on the tax notices to be collected with the tax. If a property owner fails to pay this fee, it shall become a lien upon the property. All fees and other moneys received by the district shall be placed in a separate fund with the county treasurer of such county and shall be used solely for the purpose for which said refuse disposal district was created. Warrants upon such funds shall be drawn by the board of county commissioners upon presentation of claims approved by the board. Fees and other moneys collected by joint county refuse disposal districts may be administered by one (1) county treasurer's office upon mutual agreement by the county commissioners of any joint refuse disposal district.

**History:** En. Sec. 7, Ch. 71, L. 1969; amd. Sec. 2, Ch. 136, L. 1971; amd. Sec. 48, Ch. 391, L. 1973.

#### Amendments

The 1971 amendment substituted "board" for "commissioners" in the first sentence; added "with approval of the county commissioners" at the end of the first sentence; substituted a new second sentence for a sentence reading "The commissioners shall assess the entire cost of maintenance and operation of said district on each family residential unit that is receiving

this service"; inserted "The fees shall be based upon a family residential unit, and" at the beginning of the third sentence; added the fifth through ninth sentences; and made minor changes in phraseology.

The 1973 amendment substituted "department of revenue or its agents" for "county assessor" in the fifth sentence in order to implement article VIII, section 3 of the 1972 constitution; and substituted "shall ensure that the amount of this fee is placed" in the fifth sentence for "shall place the amount of this fee."

**69-6010. Powers and duties of board.** The board of a refuse disposal district established and organized under this act have the following powers and duties with the approval of the county commissioners of the counties involved:

(1) To develop and administer a program for the collection or disposal of refuse in the district.

(2) To employ personnel.

(3) To purchase, rent, or execute leasing agreements for such equipment and material necessary for carrying on an effective refuse collection or disposal program.

(4) To co-operate with any corporation, association, individual, or group of individuals, including any agency of the federal, state, or local government, in order to carry out effective programs.

(5) To receive gifts, grants, or donations for the purpose of advancing the program; to acquire by gift, deed, purchase, or condemnation land necessary for refuse disposal purposes.

(6) To enforce department of health and environmental sciences or local board of health rules pertaining to the storage, collection, and disposal of refuse.

(7) To apply for and receive from the federal government or the state government on behalf of the refuse disposal district moneys appropriated by federal or state legislative bodies for aiding these programs.

(8) To borrow from any loaning agency funds available for assistance in planning or financing a refuse disposal district and repay these with the moneys received from the fees levied under this act.

(9) The board may implement its proposed program a section at a time. If a program is implemented a section at a time, the fees may be levied only against that part of the district that is receiving the service. As the program is expanded throughout the district, that part of the district will start to pay the fee for service.

History: En. Sec. 10, Ch. 71, L. 1969; amd. Sec. 3, Ch. 136, L. 1971; amd. Sec. 93, Ch. 349, L. 1974.

#### Amendments

The 1971 amendment substituted the preliminary paragraph for a paragraph reading "The board of directors for the refuse disposal district shall have power"; inserted "or local" before "government" in subdivision (4); added the clause relating to land acquisition at the end of subdivision (5); inserted "or the state government" in subdivision (7); substituted

"federal or state legislative bodies" for "Congress" in subdivision (7); substituted "any loaning agency" in subdivision (8) for the "the federal government"; added subdivision (9); and made minor changes in phraseology and punctuation.

The 1974 amendment substituted "department of health and environmental sciences or local board of health rules" for "state or local board of health rules and regulations" in subdivision (6) and made minor changes in phraseology and punctuation.

**69-6012. Joint districts.** Joint refuse disposal districts are districts which encompass two (2) or more counties or parts thereof. A joint refuse disposal district may be created in the following manner: The commissioners of each county affected will create the district following the procedure as prescribed under sections 69-6003, 69-6004, 69-6005, and 69-6006, R. C. M., 1947. The commissioners shall appoint a joint board of directors composed of at least five (5) members, each of whom shall be property owners in the said district. The board of directors for a joint district will consist of one (1) commissioner from each county involved, one (1) member from each of the incorporated cities or towns that are included in the district, and one (1) member from each of the county or city-county boards of

health. The rest of the joint board of directors shall consist of interested citizens distributed equally throughout the district, and the appointments shall be acceptable to all groups of county commissioners.

**History:** En. Sec. 4, Ch. 136, L. 1971.

**69-6013. Duty of county attorney—conflict of interest.** The county attorney shall be the legal adviser of the refuse disposal districts and boards within the county of his jurisdiction and shall prosecute and defend all suits to which the districts may be a party. A district or board may employ special legal counsel to defend any such suits in the event a conflict of interest would prohibit such defense by county attorney.

**History:** En. Sec. 5, Ch. 136, L. 1971;  
amd. Sec. 1, Ch. 179, L. 1973.

**Repealing Clause**

Section 6 of Ch. 136, Laws 1971 read  
"Section 16-1031, R. C. M., 1947, is repealed."

**Amendments**

The 1973 amendment added the second sentence.

CHAPTER 61—CONSENT BY MINORS FOR MEDICAL SERVICES

Section

- 69-6101. Consent of minor for health services—when valid.
- 69-6102. Divulgence of information by physician.
- 69-6103. Financial responsibility of a consenting minor.
- 69-6104. Emergencies and special situations when consent requirements differ.
- 69-6105. Immunity and responsibility of hospital, public clinic or physician.
- 69-6105.1. Health professional defined.
- 69-6106. Consent of minor to psychiatric or psychological counseling valid under urgent circumstances.
- 69-6107. Immunity of physician or psychologist.

**69-6101. Consent of minor for health services—when valid.** The consent to the provision of medical or surgical care or services by a hospital, public clinic, or the performance of medical or surgical care or services by a physician, licensed to practice medicine in this state may be given by a minor who professes or is found to meet any of the following descriptions:

- (1) A minor who is or was ever married, or has had a child, or graduated from high school, or is emancipated; or
- (2) A minor who has been separated from his parent, parents, or legal guardian for whatever reason and is supporting himself by whatever means; or
- (3) A minor who professes or is found to be pregnant, or afflicted with any reportable communicable disease including venereal disease, or drug and substance abuse including alcohol. This self-consent only applies to the prevention, diagnosis, and treatment of those conditions specified in this subsection. The self-consent in the case of pregnancy, venereal disease, and drug and substance abuse also obliges the health professional, if he accepts the responsibility for treatment, to counsel the minor by himself or by referral to another health professional for counseling; or
- (4) A minor who needs emergency care, including transfusions, without which his health will be jeopardized. The parent, parents, or legal guardian shall be informed as soon as practical except in conditions mentioned in subsections (1), (2), (3), or (4) of this section; or



(5) A minor who has had a child may give effective consent to health service for his child; or

(6) A minor may give consent for health care for his spouse if his spouse is unable to give consent by reason of physical or mental incapacity.

**History:** En. Sec. 1, Ch. 189, L. 1969; amendment to redefine the circumstances under which a minor may validly consent to receive medical or surgical care.  
amd. Sec. 1, Ch. 312, L. 1974.

#### Amendments

The 1974 amendment rewrote this sec-

**69-6102. Divulgence of information by physician.** (1) A treating physician or other health professional, may, but shall not be obligated to, inform the spouse, parent, custodian or guardian of any such minor in the circumstances as enumerated in section 69-6101, of any treatment given or needed when:

(a) in the judgment of the health professional severe complications are present or anticipated; or

(b) major surgery or prolonged hospitalization is needed; or

(c) failure to inform the parent, parents, or legal guardian would seriously jeopardize the safety and health of the minor patient, younger siblings, or the public; or

(d) to inform them would benefit the minor's physical and mental health and family harmony; or

(e) the hospital desires a third-party commitment to pay for services rendered or to be rendered.

(2) Notification or disclosure to the spouse, parent, parents, or legal guardian by the health professional shall not constitute libel or slander, a violation of the right of privacy, a violation of the rule of privileged communication or any other legal basis of liability. When the minor is found not to be pregnant, or not afflicted with venereal disease, or not suffering from a drug or substance abuse, including alcohol, then no information with respect to any appointment, examination, test, or other health procedure shall be given to the parent, parents, or legal guardian, if they have not been already informed as permitted in this act, without the consent of the minor.

**History:** En. Sec. 2, Ch. 189, L. 1969; amendment to redefine the circumstances under which the treating physician or other health professional is not obligated to inform the spouse, parent, custodian or guardian of a minor of treatment given or needed.  
amd. Sec. 2, Ch. 312, L. 1974.

#### Amendments

The 1974 amendment rewrote this section to insert the references to "health

**69-6103. Financial responsibility of a consenting minor.** Consent of the minor shall not be subject to later disaffirmance or revocation because of minority. The spouse, parent, parents, or legal guardian of a consenting minor shall not be liable for payment for such service unless the spouse, parent, parents, or legal guardian have expressly agreed to pay for such care. The minor so consenting for such health services shall thereby assume financial responsibility for the cost of said services except those who are proven unable to pay and who receive the services in public institutions.

If the minor is covered by health insurance, payment may be applied for services rendered.

**History:** En. Sec. 3, Ch. 189, L. 1969; amd. Sec. 3, Ch. 312, L. 1974.

**Amendments**  
The 1974 amendment rewrote this section which provided that the act applied to a minor who professed to be in need of services even if the minor's suspicions of pregnancy or venereal disease were not subsequently substantiated.

**69-6104. Emergencies and special situations when consent requirements differ.** (1) Any health professional may render or attempt to render emergency service or first aid, medical, surgical, dental, or psychiatric treatment without compensation to any injured person or any person regardless of age who is in need of immediate health care when, in good faith, the professional believes that the giving of aid is the only alternative to probable death or serious physical or mental damage.

(2) Any health professional may render nonemergency services to minors for conditions which will endanger the health or life of the minor if services would be delayed by obtaining consent from spouse, parent, parents, or legal guardian.

(3) No consent shall be required of any minor who does not possess the mental capacity or who has a physical disability which renders him incapable of giving his consent and who has no known relatives or legal guardians if a physician determines the health service should be given.

(4) Self-consent of minors shall not apply to sterilization or abortion.

**History:** En. Sec. 4, Ch. 189, L. 1969; amd. Sec. 4, Ch. 312, L. 1974.

**Amendments**  
The 1974 amendment rewrote this section which read: "Any consent given pursuant to the provisions of this act by a minor shall not be deemed to be valid if, following a delivery or other termination of a pregnancy, it is determined that surgery not directly connected with the pregnancy is required or shall be requested."

**69-6105. Immunity and responsibility of hospital, public clinic or physician.** (1) No physician, surgeon, dentist, health or mental health care facility may be compelled to treat a minor on his own consent against their best judgment.

(2) Nothing contained in this section shall be construed to relieve any physician, surgeon, dentist, health or mental health care facility from liability for negligence in the diagnosis and treatment rendered such minor.

**History:** En. Sec. 5, Ch. 189, L. 1969; amd. Sec. 5, Ch. 312, L. 1974.

**Amendments**  
The 1974 amendment rewrote this section which read: "In any case arising under the provisions of this act the hospital, public clinic, or physician, licensed to practice medicine in this state, who provides the care or services or who performs medical or surgical care or services shall incur no civil or criminal liability by reason of having provided the care or services, but such immunity shall not apply to any negligent acts or omissions."

**69-6105.1. Health professional defined.** Health professional as used in this act shall include only those persons licensed in Montana as physicians, psychiatrists, psychologists or dentists.

**History:** En. 69-6105.1 by Sec. 6, Ch. 312, L. 1974.

**69-6106. Consent of minor to psychiatric or psychological counseling valid under urgent circumstances.** The consent to the providing of psychiatric or psychological counseling by a physician or psychologist licensed to practice in this state, under circumstances where the need for such counseling is urgent in the opinion of the physician or psychologist involved, because of danger to the life, safety or property of a minor or of other person or persons, and the consent of the spouse, parent, custodian or guardian of the said minor cannot be obtained within a reasonable time to offset the said danger to life or safety, when executed by the said minor shall be valid and binding as if the said minor had achieved his or her majority, that is, such minor shall be deemed to have and shall have the same legal capacity to act, and the same legal obligations with regard to the giving of such consent, as a person of full legal age and capacity, the infancy of said minor and any contrary provisions of law notwithstanding, and such consent shall not be subject to later disaffirmance by reason of such minority; and the consent of no other person or persons (including, but not limited to a spouse, parent, custodian or guardian) shall be necessary in order to authorize the psychiatric or psychological counseling to such minor, provided, however, that no parent shall be obligated for the cost of such counseling without his consent.

**History:** En. Sec. 1, Ch. 315, L. 1971.

#### **Title of Act**

An act providing that minors may give legal consent to obtain psychiatric or psychological counseling where need for such counseling is urgent; that such consent shall be binding on the minor and not subject to later disaffirmance by reason

of such minority; that the consent of no other person shall be necessary in order to authorize care or services provided to such minor; providing that physicians or licensed psychologists who provide care or services under the terms of this act shall incur no civil or criminal liability, except that such immunity shall not apply to negligent acts or omissions.

**69-6107. Immunity of physician or psychologist.** In any case arising under the provisions of this act the physician or licensed psychologist who provides the psychiatric or psychological counseling services shall incur no civil or criminal liability by reason of having provided the counseling services, but such immunity shall not apply to any negligent acts or omissions.

**History:** En. Sec. 2, Ch. 315, L. 1971.

## **CHAPTER 62—ALCOHOL AND DRUG DEPENDENCE**

### **Section**

- 69-6203. Duties of department—department authorized to accept gifts—enter into contracts—acquire and dispose of property.
- 69-6211. Declaration of policy.
- 69-6212. Definitions.
- 69-6213. Powers of department.
- 69-6214. Duties of department.
- 69-6215. Comprehensive program for treatment.
- 69-6216. Facility standards—inspections—approvals.
- 69-6217. Acceptance for treatment—rules.
- 69-6218. Voluntary treatment of alcoholics.
- 69-6219. Treatment and services for intoxicated persons and persons incapacitated by alcohol.
- 69-6220. Emergency commitment.
- 69-6221. Involuntary commitment of alcoholics.
- 69-6222. Records of alcoholics and intoxicated persons.



- 69-6223. Visitation and communication of patients.
- 69-6224. Application of Administrative Procedure Act.
- 69-6225. Departmental reports to legislature.

**69-6202. Repealed.****Repeal**

Section 69-6202 (Sec. 2, Ch. 303, L. 1969), relating to the commission on alcohol and drug dependence, was repealed by Sec. 20, Ch. 302, Laws of 1974; Sec. 113, Ch. 349, Laws of 1974.

**69-6203. Duties of department—department authorized to accept gifts—enter into contracts—acquire and dispose of property.** (1) The department of health and environmental sciences, hereafter referred to as department in this chapter, shall:

(a) Plan, promote, and assist in the support of alcohol and drug dependence prevention, treatment, and control programs;

(b) Conduct, sponsor, and support research, investigations, and studies, including evaluation, of all phases of alcohol and drug dependence;

(c) Assist the development of educational and training programs relative to alcohol and drug dependence, and carry on programs to assist the public, and technical and professional groups, in becoming fully informed about alcohol and drug dependence;

(d) Promote, develop, and assist, financially and otherwise, alcohol and drug dependence programs administered by other state agencies, local government agencies, and private nonprofit organizations and agencies;

(e) Encourage and promote effective use of facilities, resources, and funds in the planning and conduct of programs and activities for prevention, treatment, and control of alcohol and drug dependence and, in this respect, co-operate with and utilize to the maximum possible extent the resources and services of federal, state, and local agencies.

(2) To carry out this act, the department may:

(a) Accept gifts, grants, and donations of money and property from public and private sources;

(b) Enter into contracts;

(c) Acquire and dispose of property.

**History:** En. Sec. 3, Ch. 303, L. 1969; amd. Sec. 94, Ch. 349, L. 1974.

substituted "The department of health and environmental sciences, hereafter referred to as department in this chapter, shall" for "The commission shall" at the beginning of the section; and made minor changes in phraseology and punctuation.

**Amendments**

The 1974 amendment substituted "department" for "commission" in the caption;

**69-6211. Declaration of policy.** It is the policy of the state of Montana to recognize alcoholism as an illness and that alcoholics and intoxicated persons may not be subjected to criminal prosecution because of their consumption of alcoholic beverages but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society.

**History:** En. 69-6211 by Sec. 1, Ch. 302, L. 1974.

**69-6212. Definitions.** For purposes of this act:

(1) "alcoholic" means a person who habitually lacks self-control as to the use of alcoholic beverages, or uses alcoholic beverages to the extent that his health is substantially impaired or endangered or his social or economic function is substantially disrupted;

(2) "approved private treatment facility" means a private agency meeting the standards prescribed in section 69-6216(1) and approved under section 69-6216;

(3) "approved public treatment facility" means a treatment agency operating under the direction and control of the department or providing treatment under this act through a contract with the department and approved under section 69-6216;

(4) "department" means the department of health and environmental sciences provided for in section 82A-601, R. C. M. 1947;

(5) "incapacitated by alcohol" means that a person, as a result of the use of alcohol, is unconscious or has his judgment otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment;

(6) "incompetent person" means a person who has been adjudged incompetent by the district court;

(7) "intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol;

(8) "treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and intoxicated persons.

History: En. 69-6212 by Sec. 2, Ch. 302,  
L. 1974.

**69-6213. Powers of department.** The department may:

(1) plan, establish, and maintain treatment programs as necessary or desirable;

(2) co-ordinate its activities and co-operate with alcoholism programs in this and other states, and make contracts and other joint or co-operative arrangements with state, local, or private agencies in this and other states for the treatment of alcoholics and intoxicated persons and for the common advancement of alcoholism programs;

(3) do other acts and things necessary or convenient to execute the authority expressly granted to it; and

(4) provide treatment facilities for alcoholics and intoxicated persons.

History: En. 69-6213 by Sec. 3, Ch. 302,  
L. 1974.

**69-6214. Duties of department.** The department shall:

(1) develop, encourage, and foster state-wide, regional, and local plans and programs for the prevention of alcoholism and treatment of alcoholics and intoxicated persons in co-operation with public and private agencies,

organizations, and individuals and provide technical assistance and consultation services for these purposes;

(2) co-ordinate the efforts and enlist the assistance of all public and private agencies, organizations, and individuals interested in prevention of alcoholism and treatment of alcoholics and intoxicated persons;

(3) co-operate with the department of institutions and board of pardons in establishing and conducting programs to provide treatment for alcoholics and intoxicated persons in or on parole from penal institutions;

(4) co-operate with the department of education, the superintendent of public instruction, schools, police departments, courts, and other public and private agencies, organizations and individuals in establishing programs for the prevention of alcoholism and treatment of alcoholics and intoxicated persons, and preparing curriculum materials thereon for use at all levels of education;

(5) prepare, publish, evaluate, and disseminate educational material dealing with the nature and effects of alcohol;

(6) develop and implement, as an integral part of treatment programs, an educational program for use in the treatment of alcoholics and intoxicated persons, which program shall include the dissemination of information concerning the nature and effects of alcohol;

(7) organize and foster training programs for all persons engaged in treatment of alcoholics and intoxicated persons;

(8) sponsor and encourage research into the causes and nature of alcoholism and treatment of alcoholics and intoxicated persons, and serve as a clearinghouse for information relating to alcoholism;

(9) specify uniform methods for keeping statistical information by public and private agencies, organizations, and individuals, and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment;

(10) advise the governor in the preparation of a comprehensive plan for treatment of alcoholics and intoxicated persons for inclusion in the state's comprehensive health plan;

(11) review all state health, welfare, and treatment plans to be submitted for federal funding under federal legislation, and advise the governor on provisions to be included relating to alcoholism and intoxicated persons;

(12) assist in the development of, and co-operate with, alcohol education and treatment programs for employees of state and local governments and businesses and industries in the state;

(13) utilize the support and assistance of interested persons in the community, particularly recovered alcoholics, to encourage alcoholics voluntarily to undergo treatment;

(14) co-operate with the department of justice in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while intoxicated;

(15) encourage general hospitals and other appropriate health facilities to admit without discrimination alcoholics and intoxicated persons and to provide them with adequate and appropriate treatment;



(16) encourage all health and disability insurance programs to include alcoholism as a covered illness; and

(17) submit to the governor an annual report covering the activities of the department.

History: En. 69-6214 by Sec. 4, Ch. 302,  
L. 1974.

**69-6215. Comprehensive program for treatment.** (1) The department shall establish a comprehensive and co-ordinated program for the treatment of alcoholics and intoxicated persons.

(2) The program shall include:

(a) emergency treatment provided by a facility affiliated with or part of the medical service of a general hospital;

(b) in-patient treatment;

(c) intermediate treatment; and

(d) out-patient and follow up treatment.

(3) The department shall provide for adequate and appropriate treatment for alcoholics and intoxicated persons admitted under sections 69-6218 to 69-6221. Treatment may not be provided at a correctional institution except for inmates.

(4) All appropriate public and private resources shall be co-ordinated with and utilized in the program if possible.

(5) The department shall prepare, publish, and distribute annually a list of all approved public and private treatment facilities.

History: En. 69-6215 by Sec. 5, Ch. 302,  
L. 1974.

**69-6216. Facility standards—inspections—approvals.** (1) The department shall establish standards for approved treatment facilities that must be met for a treatment facility to be approved as a public or private treatment facility, and fix the fees to be charged for the required inspections. The standards may concern only the health standards to be met and standards of treatment to be afforded patients.

(2) The department periodically shall inspect approved public and private treatment facilities at reasonable times and in a reasonable manner.

(3) The department shall maintain a list of approved public and private treatment facilities.

(4) Each approved public and private treatment facility shall file with the department on request, data, statistics, schedules, and information the department reasonably requires. An approved public or private treatment facility that without good cause fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent returns thereof, shall be removed from the list of approved treatment facilities.

(5) The department, after holding a hearing in accordance with the Administrative Procedure Act, may suspend, revoke, limit, or restrict an approval, or refuse to grant an approval, for failure to meet its standards.

(6) A district court may restrain any violation of this section, review any denial, restriction, or revocation of approval, and grant other relief required to enforce its provisions.

(7) Upon petition of the department and after a hearing held upon reasonable notice to the facility, a district court may issue a warrant to the department authorizing it to enter and inspect at reasonable times, and examine the books and accounts of, any approved public or private treatment facility refusing to consent to inspection or examination by the department or which the department has reasonable cause to believe is operating in violation of this act.

History: En. 69-6216 by Sec. 6, Ch. 302,  
L. 1974.

**69-6217. Acceptance for treatment—rules.** The department shall adopt rules for acceptance of persons into the treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of alcoholics and intoxicated persons. In adopting the rules the department shall be guided by the following standards:

(1) If possible a patient shall be treated on a voluntary rather than an involuntary basis.

(2) A patient shall be initially assigned or transferred to outpatient or intermediate treatment, unless he is found to require in-patient treatment.

(3) A person shall not be denied treatment solely because he has withdrawn from treatment against medical advice on a prior occasion or because he has relapsed after earlier treatment.

(4) An individualized treatment plan shall be prepared and maintained on a current basis for each patient.

(5) Provision shall be made for a continuum of co-ordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and utilize other appropriate treatment.

History: En. 69-6217 by Sec. 7, Ch. 302,  
L. 1974.

**69-6218. Voluntary treatment of alcoholics.** (1) An alcoholic may apply for voluntary treatment directly to an approved public treatment facility. If the proposed patient is a minor or an incompetent person, he, a parent, a legal guardian, or other legal representative may make the application.

(2) Subject to rules adopted by the department, the administrator of an approved public treatment facility may determine who shall be admitted for treatment. If a person is refused admission to an approved public treatment facility, the administrator, subject to departmental rules, shall refer the person to another approved public treatment facility for treatment if possible and appropriate.

(3) If a patient receiving in-patient care leaves an approved public treatment facility, he shall be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the administrator of the treatment facility that the patient is an alcoholic who requires help, the department shall arrange for assistance in obtaining supportive services and residential facilities.

(4) If a patient leaves an approved public treatment facility, with or against the advice of the administrator of the facility, the department shall

make reasonable provisions for his transportation to another facility or to his home. If he has no home he shall be assisted in obtaining shelter. If he is a minor or an incompetent person the request for discharge from an in-patient facility shall be made by a parent, legal guardian, or other legal representative or by the minor or incompetent if he was the original applicant.

History: En. 69-6218 by Sec. 8, Ch. 302,  
L. 1974.

**69-6219. Treatment and services for intoxicated persons and persons incapacitated by alcohol.** (1) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. A person who appears to be intoxicated in a public place and to be in need of help, if he consents to the proffered help, may be assisted to his home, an approved public treatment facility, an approved private treatment facility, or other health facility by the police.

(2) A person who appears to be incapacitated by alcohol shall be taken into protective custody by the police and forthwith brought to an approved public treatment facility for emergency treatment. If no approved public treatment facility is readily available he shall be taken to an emergency medical service customarily used for incapacitated persons. The police, in detaining the person and in taking him to an approved public treatment facility, is taking him into protective custody and shall make every reasonable effort to protect his health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps to protect himself. No entry or other record may be made to indicate that the person taken into custody under this section has been arrested or charged with a crime.

(3) A person who comes voluntarily or is brought to an approved public treatment facility shall be examined by a licensed physician as soon as possible. He may then be admitted as a patient or referred to another health facility. The referring approved public treatment facility shall arrange for his transportation.

(4) A person who by medical examination is found to be incapacitated by alcohol at the time of his admission or to have become incapacitated at any time after his admission, may not be detained at the facility (1) once he is no longer incapacitated by alcohol, or (2) if he remains incapacitated by alcohol for more than forty-eight (48) hours after admission as a patient, unless he is committed under section 69-6220. A person may consent to remain in the facility as long as the physician in charge believes appropriate.

(5) A person who is not admitted to an approved public treatment facility and is not referred to another health facility, may be taken to his home. If he has no home, the approved public treatment facility shall assist him in obtaining shelter.

(6) If a patient is admitted to an approved public treatment facility, his family or next of kin shall be notified as promptly as possible. If an



adult patient who is not incapacitated requests that there be no notification, his request shall be respected.

History: En. 69-6219 by Sec. 9, Ch. 302,  
L. 1974.

**69-6220. Emergency commitment.** (1) An intoxicated person who (a) has threatened, attempted, or inflicted physical harm on another and is likely to inflict physical harm on another unless committed, or (b) is incapacitated by alcohol, may be committed to an approved public treatment facility for emergency treatment. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment.

(2) The certifying physician, spouse, guardian, or relative of the person to be committed, or any other responsible person, may make a written application for commitment under this section, directed to the administrator of the approved public treatment facility. The application shall state facts to support the need for emergency treatment and be accompanied by a physician's certificate stating that he has examined the person sought to be committed within two (2) days before the certificate's date and facts supporting the need for emergency treatment. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(3) Upon approval of the application by the administrator of the approved public treatment facility, the person shall be brought to the facility by a peace officer, health officer, the applicant for commitment, the patient's spouse, the patient's guardian, or any other interested person. The person shall be retained at the facility to which he was admitted, or transferred to another appropriate public or private treatment facility, until discharged under subsection (5)

(4) The administrator of an approved public treatment facility shall refuse an application if in his opinion the application and certificate fail to sustain the grounds for commitment.

(5) When on the advice of the medical staff the administrator determines that the grounds for commitment no longer exist, he shall discharge a person committed under this section. No person committed under this section may be detained in any treatment facility for more than five (5) days. If a petition for involuntary commitment under section 69-6221 has been filed within the five (5) days and the administrator in charge of an approved public treatment facility finds that grounds for emergency commitment still exist, he may detain the person until the petition has been heard and determined, but no longer than ten (10) days after filing the petition.

(6) A copy of the written application for commitment and of the physician's certificate, and a written explanation of the person's right to counsel, shall be given to the person within twenty-four (24) hours after commitment by the department, who shall provide a reasonable opportunity for the person to consult counsel.

History: En. 69-6220 by Sec. 10, Ch. 302,  
L. 1974.

**69-6221. Involuntary commitment of alcoholics.** (1) A person may be committed to the custody of the department of institutions by the district court upon the petition of his spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition shall allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that he (a) has threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another; or (b) is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition shall be accompanied by a certificate of a licensed physician who has examined the person within two (2) days before submission of the petition, unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no later than ten (10) days after the date the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, shall be served on the petitioner, the person whose commitment is sought, his next of kin other than the petitioner, a parent or his legal guardian if he is a minor, the administrator in charge of the approved public treatment facility to which he has been committed for emergency care, and any other person the court believes advisable. A copy of the petition and certificate shall be delivered to each person notified.

(3) At the hearing the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person shall have a right to have a licensed physician of his own choosing examine him and testify on his behalf, and if he has no funds with which to pay such physician, the reasonable costs of one such examination and testimony shall be paid by the county. The person shall be present unless the court believes that his presence is likely to be injurious to him; he shall be advised of his right to counsel and, if he is unable to hire his own counsel, the court shall appoint an attorney to represent him at the expense of the county. The court shall examine the person in open court, or if advisable, shall examine the person in chambers. If he refuses an examination by a licensed physician and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more medical evidence is necessary, the court may make a temporary order committing him to the department of institutions for a period of not more than five (5) days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination by the department of institutions, the court finds that grounds for involuntary commitment have been established by clear and convincing evidence, it shall make an order of commitment to the department of institutions. It may not order commitment of a person unless it determines that the department of institutions is able to provide ade-

quate and appropriate treatment for him and the treatment is likely to be beneficial.

(5) A person committed under this section shall remain in the custody of the department of institutions for treatment for a period of thirty (30) days unless sooner discharged. At the end of the thirty (30) day period, he shall be discharged automatically unless the department of institutions before expiration of the period obtains a court order from the district court of the committing district for his recommitment upon the grounds set forth in subsection (1) for a further period of ninety (90) days unless sooner discharged. If a person has been committed because he is an alcoholic likely to inflict physical harm on another, the department of institutions shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) who has not been discharged by the department of institutions before the end of the ninety (90) day period shall be discharged at the expiration of that period unless the department of institutions, before expiration of the period, obtains a court order from the district court of the committing district on the grounds set forth in subsection (1) for recommitment for a further period not to exceed ninety (90) days. If a person has been committed because he is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two (2) recommitment orders under subsections (5) and (6) are permitted.

(7) Upon the filing of a petition for recommitment under subsections (5) or (6), the court shall fix a date for hearing no later than ten (10) days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, shall be served on the petitioner, the person whose commitment is sought, his next of kin other than the petitioner, the original petitioner under subsection (1) if different from the petitioner for recommitment, one of his parents or his legal guardian if he is a minor, and any other person the court believes advisable. At the hearing the court shall proceed as provided in subsection (3).

(8) A person committed to the custody of the department of institutions for treatment shall be discharged at any time before the end of the period for which he has been committed if either of the following conditions is met:

(a) in case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that he is no longer in need of treatment or the likelihood no longer exists; or

(b) in case of an alcoholic committed on the grounds of the need of treatment and incapacity, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(9) The court shall inform the person whose commitment or recommitment is sought of his right to contest the application, be represented by counsel at every stage of any proceedings relating to his commitment and



recommitment, and have counsel appointed by the court or provided by the court, if he wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him regardless of his wishes. The person whose commitment or recommitment is sought shall be informed of his right to be examined by a licensed physician of his choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) If a private treatment facility agrees with the request of a competent patient or his parent, sibling, adult child, or guardian to accept the patient for treatment, the department of institutions may transfer him to the private treatment facility.

(11) A person committed under this section may at any time seek to be discharged from commitment by writ of habeas corpus or other appropriate means.

(12) The venue for proceedings under this section is the place in which person to be committed resides or is present.

History: En. 69-6221 by Sec. 11, Ch. 302,  
L. 1974.

**69-6222. Records of alcoholics and intoxicated persons.** (1) The registration and other records of treatment facilities shall remain confidential and are privileged to the patient.

(2) Notwithstanding subsection (1), the department may make available information from patients' records for purposes of research into the causes and treatment of alcoholism. Information under this subsection shall not be published in a way that discloses patients' names or other identifying information.

History: En. 69-6222 by Sec. 12, Ch. 302,  
L. 1974.

**69-6223. Visitation and communication of patients.** (1) Subject to reasonable rules regarding hours of visitation which the department may adopt, patients in any approved treatment facility shall be granted opportunities for adequate consultation with counsel, and for continuing contact with family and friends consistent with an effective treatment program.

(2) Neither mail nor other communication to or from a patient in any approved treatment facility may be intercepted, read, or censored. The administrator may adopt reasonable rules regarding the use of telephone by patients in approved treatment facilities.

History: En. 69-6223 by Sec. 13, Ch. 302,  
L. 1974.

**69-6224. Application of Administrative Procedure Act.** The Administrative Procedure Act applies to and governs all administrative actions taken under this act.

History: En. 69-6224 by Sec. 14, Ch. 302,  
L. 1974.

**69-6225. Departmental reports to legislature.** The department and the department of institutions shall achieve full implementation of the provisions of the act, as set forth in this chapter and related sections, no later than January 1, 1976. A progress report on the implementation shall be made to the 1975 legislative session. Thereafter the departments shall report, to each legislative session, on the status of the implemented act. This report, or any part thereof, may be included as the department's state plan for alcohol abuse and alcoholism.

**History:** En. 69-6224 by Sec. 19, Ch. 302, L. 1974.

**Repealing Clause**

Section 20 of Ch. 302, Laws 1974 read "Sections 4-164 and 69-6202, R. C. M. 1947, are repealed."

**CHAPTER 64—VOLUNTARY STERILIZATION—STATE BOARD OF EUGENICS**

**Section**

- 69-6403. Application for sterilization—hearing—showing required of applicant—designation of surgeon—written consent.  
 69-6404. Findings prerequisite to approval—certificate.  
 69-6405. No civil or criminal liability arises from sterilization—exception.  
 69-6406. Certificate that applicant does not possess capacity for voluntary consent to sterilization—person disregarding certificate guilty of misdemeanor and civilly liable—exception.

**69-6402. Repealed.**

**Repeal**

Section 69-6402 (Sec. 2, Ch. 332, L. 1969; Sec. 1, Ch. 74, L. 1971), relating to creation and composition of the state board of eugenics, was repealed by Sec. 96, Ch. 120, Laws of 1974.

**69-6403. Application for sterilization—hearing—showing required of applicant—designation of surgeon—written consent.** (1) The department of institutions shall receive applications by or on behalf of persons covered by this act to be sterilized. Upon receipt of the application, which shall be in any form calculated to apprise the board of eugenics of the desire of the applicant to be sterilized, the board shall conduct a hearing at which the applicant must be present in person for examination by the board and evidence must be presented to establish:

- (a) Whether the applicant is one of the group covered by this act;
- (b) Whether it would be in the best interest of the applicant and the state for the applicant to be sterilized;
- (c) Whether evidence by a qualified clinical geneticist or by someone recognized by the board of eugenics as having expertise in clinical genetics indicates that sterilization is desirable and beneficial to the applicant;
- (d) Whether the applicant, whether or not a minor, is capable of understanding and does understand the nature and consequences of the medical treatment he or she will undergo and with this understanding voluntarily consents thereto;
- (e) Whether the medical treatment can be carried out without unreasonable risk to the life and health of the applicant;
- (f) The method and manner in which the sterilization is to be accomplished.

(2) At the hearing the applicant shall designate the person to perform the sterilization who may be any physician and surgeon licensed to practice medicine in the state. The applicant at the hearing shall sign a written voluntary consent to the sterilization in the form to be provided by the department of institutions.

History: En. Sec. 3, Ch. 332, L. 1969; amd. Sec. 34, Ch. 120, L. 1974.

#### Amendments

The 1974 amendment substituted "department of institutions" for "state board

of eugenics" in the first sentence of subsection (1) and for "board" in subsection (2); substituted "board of eugenics" for "board" in the second sentence of subsection (1); and made minor changes in phraseology, punctuation and style.

**69-6404. Findings prerequisite to approval—certificate.** (1) If, after the hearing, the board of eugenics finds:

- (a) That the applicant is one of the group covered by this act;
- (b) That it would be in the best interest of the applicant and the state that the applicant be sterilized;
- (c) That the applicant, whether or not a minor, is capable of understanding and does understand the nature and consequences of the medical treatment he or she will undergo and with such understanding voluntarily consents in writing thereto;
- (d) That such medical treatment can be carried out without unreasonable risk to the life and health of the applicant;
- (e) That the method and manner in which the sterilization is to be accomplished is by such procedures and under such conditions as are medically approved according to the standards for such procedures in the state;
- (f) That the person designated to perform the sterilization is one qualified under this act to perform the sterilization;
- (g) That the applicant has in writing voluntarily consented to the medical treatment;
- (h) That the parents or guardian, if any exist, have given written consent to the sterilization.

(2) It shall make a certificate reciting the findings and signed by all members of the board. The original of the certificate shall be sent by the department of institutions to the physician designated by the applicant to perform the medical treatment; one copy thereof shall be sent to the applicant or his or her parent, guardian or custodian and one copy to remain in the permanent files of the department of institutions. Upon receipt of the certificate the physician designated to perform the medical treatment may proceed with the medical treatment in accordance with the certificate. Arrangements for the medical treatment shall be made between the physician designated in the certificate and the applicant or his or her parent, guardian, or custodian.

History: En. Sec. 4, Ch. 332, L. 1969; amd. Sec. 35, Ch. 120, L. 1974.

#### Amendments

The 1974 amendment substituted "board of eugenics" for "board" in the first sentence of subsection (1); inserted "depart-

ment of institutions" after "shall be sent by" in the second sentence of subsection (2); substituted "department of institutions" for "board" at the end of the second sentence of subsection (2); and made minor changes in phraseology, punctuation and style.



**69-6405. No civil or criminal liability arises from sterilization—exception.** Neither the members of the board of eugenics nor any physician and surgeon or assistant concerned nor any other person participating in the execution of the provisions of this act in conformity with the board's certificate is thereafter liable either civilly or criminally to anyone for having performed or authorizing the performance of the sterilization. The physician or surgeon or assistant concerned is liable for any damage caused by the negligent performance of the sterilization in accordance with the general law of the state covering such negligence.

**History:** En. Sec. 5, Ch. 332, L. 1969; for "state board of eugenics" in the first  
amd. Sec. 36, Ch. 120, L. 1974. sentence; and made minor changes in  
phraseology and punctuation.

#### Amendments

The 1974 amendment substituted "board"

**69-6406. Certificate that applicant does not possess capacity for voluntary consent to sterilization—person disregarding certificate guilty of misdemeanor and civilly liable—exception.** If, upon the hearing, the board of eugenics finds that the applicant does not possess the capacity for voluntary consent to sterilization, as set forth in section 69-6403 and section 69-6404, the board shall make a certificate setting forth that finding. The department of institutions shall send the original to the physician designated by the applicant to perform the medical treatment; one copy shall be sent to the applicant or his or her parent, guardian or custodian, and one copy to remain in the permanent files of the department. After the certificate is filed, it is unlawful, and punishable as a misdemeanor, for any person to perform or assist in the performance of a sterilization of the applicant or to produce or assist directly or indirectly in the procurement of such sterilization on the applicant, and any such person shall be civilly liable for damages for the performance or the procuring directly or indirectly of the performance of eugenical sterilization upon the applicant. However, nothing in this act shall prohibit a physician, at the request of the applicant, his or her parent, guardian or custodian, from performing a sterilization procedure on the applicant for purely medical as distinguished from eugenical reasons.

**History:** En. Sec. 6, Ch. 332, L. 1969; tence; substituted "department of institu-  
amd. Sec. 37, Ch. 120, L. 1974. tions" for "board" at the beginning, and  
"department" for "board" at the end of  
the second sentence; and made minor  
changes in phraseology and punctuation.

#### Amendments

The 1974 amendment substituted "board of eugenics" for "board" in the first sen-

## CHAPTER 65—MONTANA ENVIRONMENTAL POLICY ACT

### Section

- 69-6501. Short title.
- 69-6502. Purpose of act.
- 69-6503. Declaration of state policy for the environment.
- 69-6504. General directions to state agencies.
- 69-6505. Review of statutory authority and administrative policies to determine deficiencies or inconsistencies.
- 69-6506. Specific statutory obligations unimpaired.
- 69-6507. Policies and goals supplementary.
- 69-6508. Environmental quality council.
- 69-6509. Term of office.
- 69-6510. Meetings.

- 69-6511. Appointment and qualifications of an executive director.
- 69-6512. Appointment of employees.
- 69-6513. Term and removal of the executive director.
- 69-6514. Duties of executive director and staff.
- 69-6515. Examination of records of government agencies.
- 69-6516. Hearings by council—enforcement of subpoenas.
- 69-6517. Consultation with other groups—utilization of services.

**69-6501. Short title.** This act may be cited as the "Montana Environmental Policy Act."

**History:** En. Sec. 1, Ch. 238, L. 1971.

**Title of Act**

An act to establish a state policy for

the environment and to establish an environmental quality council and setting forth its powers and duties and providing an effective date.

**69-6502. Purpose of act.** The purpose of this act is to declare a state policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the state; and to establish an environmental quality council.

**History:** En. Sec. 2, Ch. 238, L. 1971.

**69-6503. Declaration of state policy for the environment.** The legislative assembly, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the state of Montana, in co-operation with the federal government and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can coexist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Montanans.

(a) In order to carry out the policy set forth in this act, it is the continuing responsibility of the state of Montana to use all practicable means, consistent with other essential considerations of state policy, to improve and co-ordinate state plans, functions, programs, and resources to the end that the state may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Montanans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our

unique heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(b) The legislative assembly recognizes that each person shall be entitled to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

**History:** En. Sec. 3, Ch. 238, L. 1971.

**69-6504. General directions to state agencies.** The legislative assembly authorizes and directs that, to the fullest extent possible.

(a) The policies, regulations, and laws of the state shall be interpreted and administered in accordance with the policies set forth in this act, and

(b) all agencies of the state shall

(1) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment;

(2) identify and develop methods and procedures, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision making along with economic and technical considerations;

(3) include in every recommendation or report on proposals for projects, programs, legislation and other major actions of state government significantly affecting the quality of the human environment, a detailed statement on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible state official shall consult with and obtain the comments of any state agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate state, federal, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the governor, the environmental quality council and to the public, and shall accompany the proposal through the existing agency review processes.



(4) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(5) recognize the national and long-range character of environmental problems and, where consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national co-operation in anticipating and preventing a decline in the quality of mankind's world environment;

(6) make available to counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(7) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(8) assist the environmental quality council established by section 8 [69-6508] of this act.

**History:** En. Sec. 4, Ch. 238, L. 1971.

**69-6505. Review of statutory authority and administrative policies to determine deficiencies or inconsistencies.** All agencies of the state shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this act and shall propose to the governor and the environmental quality council not later than July 1, 1972, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this act.

**History:** En. Sec. 5, Ch. 238, L. 1971.

**69-6506. Specific statutory obligations unimpaired.** Nothing in section 3 [69-6503] or 4 [69-6504] shall in any way affect the specific statutory obligations of any agency of the state

(a) to comply with criteria or standards of environmental quality,

(b) to co-ordinate or consult with any other state or federal agency, or

(c) to act, or refrain from acting contingent upon the recommendations or certification of any other state or federal agency.

**History:** En. Sec. 6, Ch. 238, L. 1971.

**69-6507. Policies and goals supplementary.** The policies and goals set forth in this act are supplementary to those set forth in existing authorizations of all boards, commissions, and agencies of the state.

**History:** En. Sec. 7, Ch. 238, L. 1971.

**69-6508. Environmental quality council.** The environmental quality council shall consist of thirteen (13) members to be as follows:

(a) The governor or his designated representative shall be an ex officio member of the council and shall participate in council meetings as a regular member.

(b) Four (4) members of the senate and four (4) members of the house of representatives appointed before the sixtieth legislative day in the same manner as standing committees of the respective houses are appointed. A vacancy on the council occurring when the legislative assembly is not in session shall be filled by the selection of a member of the legislative assembly by the remaining members of the council. No more than two (2) of the appointees of each house shall be members of the same political party.

(c) Four (4) members of the general public to be appointed by the governor with the consent of the senate.

In considering the appointments of (b) and (c) above, consideration shall be given to their qualifications to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the state government in the light of the policy set forth in section 3 [69-6503] of this act; to be conscious and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the state; and to formulate and recommend state policies to promote the improvement of the quality of the environment.

**History:** En. Sec. 8, Ch. 238, L. 1971.

**69-6509. Term of office.** The four (4) council members from the house of representatives shall serve for two (2) years and may be reappointed. Two (2) council members from the senate, one from each political party, and two (2) council members from the general public shall serve for four (4) years, and these members may be reappointed for a two (2) year term. Two (2) council members from the senate, one from each political party, and two (2) council members from the general public shall serve for two (2) years and these members may be reappointed for a four (4) year term. In no case shall a member of the council serve more than six (6) years.

The council shall elect one of its members as chairman and such other officers as it deems necessary. Such officer shall be elected for a term of two (2) years.

**History:** En. Sec. 9, Ch. 238, L. 1971.

**69-6510. Meetings.** The council may determine the time and place of its meetings but shall meet at least once each quarter. Each member of the council shall, unless he is a full-time salaried officer or employee of this state, be paid twenty-five dollars (\$25) for each day in which he is actually and necessarily engaged in the performance of council duties, and shall also be reimbursed for actual and necessary expenses incurred while in the performance of council duties. Members who are full-time salaried officers or employees of this state may not be compensated for their service as members, but shall be reimbursed for their expenses.

**History:** En. Sec. 10, Ch. 238, L. 1971.

**69-6511. Appointment and qualifications of an executive director.** The council shall appoint the executive director and set his salary. The executive director shall hold a degree from an accredited college or university with a major in one of the several environmental sciences and shall have

at least three (3) years of responsible experience in the field of environmental management.

He shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the state government in the light of the policy set forth in section 3 [69-6503] of this act; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the state; and to formulate and recommend state policies to promote the improvement of the quality of the environment.

History: En. Sec. 11, Ch. 238, L. 1971.

**69-6512. Appointment of employees.** The executive director, subject to the approval of the council may appoint whatever employees are necessary to carry out the provisions of this act, within the limitations of legislative appropriations.

History: En. Sec. 12, Ch. 238, L. 1971.

**69-6513. Term and removal of the executive director.** The executive director is solely responsible to the environmental quality council. He shall hold office for a term of two (2) years beginning with July 1 of each odd-numbered year. The council may remove him for misfeasance, malfeasance or nonfeasance in office at any time after notice and hearing.

History: En. Sec. 13, Ch. 238, L. 1971.

**69-6514. Duties of executive director and staff.** It shall be the duty and function of the executive director and his staff

(a) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in section 3 [69-6503] of this act, and to compile and submit to the governor and the legislative assembly studies relating to such conditions and trends;

(b) to review and appraise the various programs and activities of the state agencies in the light of the policy set forth in section 3 [69-6503] of this act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the governor and the legislative assembly with respect thereto;

(c) to develop and recommend to the governor and the legislative assembly, state policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the state;

(d) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(e) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data



and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(f) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the legislative assembly requests;

(g) to analyze legislative proposals in clearly environmental areas and in other fields where legislation might have environmental consequences, and assist in preparation of reports for use by legislative committees, administrative agencies, and the public.

(h) to consult with, and assist legislators who are preparing environmental legislation, to clarify any deficiencies or potential conflicts with an overall ecologic plan.

(i) to review and evaluate operating programs in the environmental field in the several agencies to identify actual or potential conflicts, both among such activities, and with a general ecologic perspective, and to suggest legislation to remedy such situations.

(j) to transmit to the governor and the legislative assembly annually, and make available to the general public annually, beginning July 1, 1972, an environmental quality report concerning the state of the environment which shall contain

(1) the status and condition of the major natural, man-made, or altered environmental classes of the state, including, but not limited to, the air, the aquatic, including surface and ground water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment;

(2) the adequacy of available natural resources for fulfilling human and economic requirements of the state in the light of expected population pressures;

(3) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the state in the light of expected population pressures;

(4) a review of the programs and activities (including regulatory activities) of the state and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and

(5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

History: En. Sec. 14, Ch. 238, L. 1971.

**69-6515. Examination of records of government agencies.** The environmental quality council shall have the authority to investigate, examine and inspect all records, books and files of any department, agency, commission, board or institution of the state of Montana.

History: En. Sec. 15, Ch. 238, L. 1971.

**69-6516. Hearings by council—enforcement of subpoenas.** In the discharge of its duties the environmental quality council shall have authority to hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses, and the production of any papers, books, accounts, documents and testimony, and to cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court. In case of disobedience on the part of any person to comply with any subpoena issued on behalf of the council, or any committee thereof, or of the refusal of any witness to testify on any matters regarding which he may be lawfully interrogated, it shall be the duty of the district court of any county or the judge thereof, on application of the environmental quality council to compel obedience by proceedings for contempt as the case of disobedience of the requirements of a subpoena issued from such court on a refusal to testify therein.

**History:** En. Sec. 16, Ch. 238, L. 1971.

**69-6517. Consultation with other groups—utilization of services.** In exercising its powers, functions, and duties under this act, the council shall

(a) consult with such representatives of science, industry, agriculture, labor, conservation organizations, educational institutions, local governments and other groups, as it deems advisable; and

(b) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the commission's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

**History:** En. Sec. 17, Ch. 238, L. 1971.

vided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

**Effective Date**

Section 18 of Ch. 238, Laws 1971 pro-

## CHAPTER 66—PASSENGER TRAMWAYS

**Section**

- 69-6601. Policy of state.
- 69-6602. Definitions.
- 69-6605. Registration of tramways required.
- 69-6606. Application for registration.
- 69-6607. Issuance of certificates.
- 69-6608. Fees.
- 69-6609. Deposit of fees.
- 69-6610. Additional powers and duties of department.
- 69-6611. Inspection of tramways.
- 69-6612. Order for corrective action and compliance.
- 69-6613. Remedies to enforce compliance.
- 69-6614. Judicial review.
- 69-6615. Tramways not common carrier or public utilities.
- 69-6616. Unlawful to endanger life or cause damage.
- 69-6617. Violation a misdemeanor.

**69-6601. Policy of state.** In order to safeguard the life, health, property and welfare of the citizens of Montana while using passenger tramways, as defined in section 2 [69-6602] of this act, it shall be the policy

of the state to protect its citizens and visitors from unnecessary mechanical hazards in the design construction and operation of passenger tramways, but not from the hazards inherent in the sports of mountaineering, skiing and hiking, or from the hazards of the area served by the skier or other sportsman; and that periodic inspections be required of passenger tramways with a view to assuring that each one of them meets the rules and regulations as set forth by the department. The state, through the department, shall register all passenger tramways in the state, establish reasonable standards of design, construction and operational practices and cause to be made such inspections as may be necessary in carrying this policy into effect.

**History:** En. Sec. 1, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974.

passenger tramway registration, registration fees, and judicial review.

#### **Title of Act**

An act relating to the inspection of passenger tramways; providing for creation of a passenger tramway safety board, term of office, and compensation of board members, powers and duties of the board,

#### **Amendments**

The 1974 amendment substituted "department" for "Montana state aerial tramway board" at the end of the next to last sentence.

#### **69-6602. Definitions.** As used in this act:

(1) "Department" means the department of administration provided for in Title 82A, chapter 2.

(2) "Industry" means the passenger tramway business activities of all those persons in the state who own, manage, or direct the operation of passenger tramways.

(3) "Operator" means a person, including any political subdivision or instrumentality thereof, who owns, manages or directs the operation of a passenger tramway.

(4) "Area" means the area, terrain or ski slopes served by a passenger tramway.

(5) "Passenger tramway" means a device used to transport passengers by means of any of the following:

(a) Two-car aerial passenger tramway, a device used to transport passengers in two open or enclosed cars attached to, and suspended from, a moving wire rope or attached to a moving wire rope and supported on a standing wire rope, or similar devices;

(b) Multi-car aerial passenger tramway, a device used to transport passengers in several open or enclosed cars or carrying device attached to, and suspended from, a moving wire rope or attached to a moving wire rope and supported on a standing wire rope, or similar devices;

(c) Skimobile, a device in which a passenger car running on steel or wooden tracks is attached to and pulled by a steel cable, or similar devices;

(d) Chair lift, a type of transportation on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain or link belt supported by trestles or towers with one or more spans, or similar devices;

(e) J bar, T bar or platter pull, so-called, and similar types of devices or means of transportation which pull skiers riding on skis by



means of an attachment to a main overhead cable supported by trestles or towers with one or more spans;

(f) Rope tow, a type of transportation which pulls the skiers, riding on skis as the skier grasps the rope or wire rope manually, or similar devices.

**History:** En. Sec. 2, Ch. 436, L. 1971; amd. Sec. 53, Ch. 511, L. 1973.

**Amendments**

The 1973 amendment substituted the defi-

nition in subsection (1) for a subsection which read "The word 'board' means the passenger tramway safety board created by section 3"; and made minor changes in style and phraseology.

**69-6603, 69-6604. Repealed.**

**Repeal**

Sections 69-6603, 69-6604 (Secs. 3, 4, Ch. 436, L. 1971), relating to the tramway

safety board, were repealed by Sec. 58, Ch. 511, Laws 1973.

**69-6605. Registration of tramways required.** No passenger tramway shall be operated in this state unless it has been and continues to be registered with the department; provided, however, that the initial application for the registration of a passenger tramway shall permit the operator to operate such passenger tramway until final action on the application shall have been taken by the department; and if an operator files an application for the registration of a passenger tramway with the department which at that time is registered, then the operator may continue the operation of such passenger tramway under the existing registration until the department takes final action on the pending application and shall have (a) issued a certificate to the operator, or (b) given written notice to the operator that the passenger tramway has not qualified for certification.

**History:** En. Sec. 5, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974.

**Amendments**

The 1974 amendment substituted "department" for "board" throughout the section.

**69-6606. Application for registration.** On or before October 1, 1971, and each year following on or before October 1, every operator of a passenger tramway shall apply to the department, on forms prepared by it, for registration of the passenger tramways owned, operated, or managed by him. The application shall contain such information as the department may reasonably require in order for it to determine whether the passenger tramways sought to be registered comply with the intent of this act as specified in section 1 [69-6601] and the rules and regulations promulgated by the department pursuant to section 10 [69-6610].

**History:** En. Sec. 6, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974.

**Amendments**

The 1974 amendment substituted "department" for "board" throughout the section.

**69-6607. Issuance of certificates.** (1) The department shall issue to the applying operator registration certificates for each passenger tramway owned, managed, or operated by such operator when it is satisfied:

(a) That the facts stated in the application are sufficient to enable the department to fulfill its duties under this article; and

(b) That each such passenger tramway sought to be registered complies with the rules and regulations of the department promulgated pursuant to section 10 [69-6610].

(2) In order to satisfy itself that the conditions described in paragraphs (a) and (b) of subsection (1) of this section have been fulfilled, the department may cause to be made such inspections described in section 11 [69-6611] as it may reasonably deem necessary.

(3) When an operator installs a passenger tramway subsequent to October 1 of any year, such operator shall file a supplemental application for registration of such passenger tramway. Upon the receipt of such supplemental application, the department shall proceed immediately to initiate proceedings leading to the registration or rejection of registration of such passenger tramway pursuant to the provisions of this chapter.

(4) Each registration shall expire on September 30 of the year next following the year of issuance.

(5) Each operator shall cause the registration certificate for each passenger tramway registered to be displayed conspicuously at the place where passengers load.

**History:** En. Sec. 7, Ch. 436, L. 1971;      **Amendments**  
amd. Sec. 2, Ch. 63, L. 1974.

The 1974 amendment substituted "department" for "board" throughout the section.

**69-6608. Fees.** The application for registration, or supplemental application shall be accompanied by such annual fees as the department may fix from year to year, not to exceed the following annual fees: passenger tramways described in section 2 (5) (e) and (f) [69-6602 (5) (e) and (f)], twenty-five dollars (\$25) each; (c) and (d), fifty dollars (\$50) each; (a) and (b), one hundred dollars (\$100) each.

**History:** En. Sec. 8, Ch. 436, L. 1971;      **Amendments**  
amd. Sec. 2, Ch. 63, L. 1974.

The 1974 amendment substituted "department" for "board."

**69-6609. Deposit of fees.** All fees collected by the department shall be deposited in an earmarked revenue fund—passenger tramway safety account.

**History:** En. Sec. 9, Ch. 436, L. 1971;      **Amendments**  
amd. Sec. 2, Ch. 63, L. 1974.

The 1974 amendment substituted "department" for "board."

**69-6610. Additional powers and duties of department.** (1) In addition to all other powers and duties conferred and imposed upon the department by this article, the department shall have and exercise the following powers and duties:

(a) To adopt reasonable rules and regulations relating to public safety in the design, construction and operation of passenger tramways, but which shall not relate or pertain to an area served by a passenger tramway. In adopting such rules and regulations the department shall use as a guideline the standards contained in "The American National Standards Institute—Safety Requirements for Aerial Passenger Tramways." ANSI B 77.1—1970, as amended from time to time, or equivalent, and as amended or supplemented from time to time by the department, and shall not be

discriminatory in their application to operators of passenger tramways, and shall hold hearings and take in all evidence relating to the adoption of these rules and regulations; and the department shall supply to each operator a copy of its rules and regulations and each amendment thereto or revision thereof.

(b) To hold hearings and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the department, subpoena witnesses, administer oaths, and compel the testimony of witnesses and the production of books, papers and records relevant to any inquiry;

(c) To approve, deny, revoke, and renew the registrations provided for in this chapter;

(d) To cause the prosecution and enjoinder of all persons violating the provisions of this chapter and incur the necessary expenses thereof;

(e) To elect officers and adopt a seal which may be affixed to all registrations issued by the department;

(f) To employ, within the funds available, and prescribe the duties of a secretary and such other personnel as the department shall deem necessary.

History: En. Sec. 10, Ch. 436, L. 1971;  
amd. Sec. 2, Ch. 63, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "board" throughout the section.

**69-6611. Inspection of tramways.** The department may cause to be made such inspection of the design, construction, operation, and maintenance of passenger tramways as the department may reasonably require. The department may employ qualified engineers to make such inspections for reasonable fees plus expenses. If, as the result of an inspection, it is found that a violation of the department's rules and regulations exists, or a condition in passenger tramway construction, operation or maintenance exists endangering the safety of the public, an immediate report shall be made to the operator whose passenger tramway has received such inspection and to the department for appropriate investigation and order.

History: En. Sec. 11, Ch. 436, L. 1971;  
amd. Sec. 2, Ch. 63, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "board" throughout the section.

**69-6612. Order for corrective action and compliance.** If, after investigation, the department finds that a violation of this chapter or any of its rules or regulations exists, or that there is a condition in passenger tramway construction, operation, or maintenance endangering the safety of the public, it shall forthwith issue its written order setting forth its findings, the corrective action to be taken, and fixing a reasonable time for compliance therewith. Such order shall be served upon the operator involved in such violation personally or by registered mail at the department's election, and return shall be made as provided in the Montana Rules of Civil Procedure.

History: En. Sec. 12, Ch. 436, L. 1971;  
amd. Sec. 2, Ch. 63, L. 1974.

#### Amendments

The 1974 amendment substituted "department" for "board" throughout the section.



**69-6613. Remedies to enforce compliance.** If any operator fails to comply with a legal order, rule or regulation of the department, the department, at its election, may compliance therewith. In such proceedings the department shall not be required to post bond.

**History:** En. Sec. 13, Ch. 436, L. 1971;  
amd. Sec. 2, Ch. 63, L. 1974.

**Amendments**

The 1974 amendment substituted "department" for "board" throughout the section.

**69-6614. Judicial review.** Any order of the department adverse to an operator may be appealed by the operator to the district court of the district wherein is located his passenger tramway which is the subject of such order, and said district court shall conduct a proceeding, de novo, and the decision of the district court shall be subject to appeal to the supreme court of Montana, as in civil cases.

**History:** En. Sec. 14, Ch. 436, L. 1971;  
amd. Sec. 2, Ch. 63, L. 1974.

**Amendments**

The 1974 amendment substituted "department" for "board."

**69-6615. Tramways not common carrier or public utilities.** Passenger tramways shall not be construed to be common carrier or public utilities for the purposes of regulation within the meaning of the laws of the state of Montana.

**History:** En. Sec. 15, Ch. 436, L. 1971.

**69-6616. Unlawful to endanger life or cause damage.** It shall be unlawful for any person riding or using a passenger tramway to do so in such manner as to endanger the life and safety of other persons or cause damage to passenger tramway equipment.

**History:** En. Sec. 16, Ch. 436, L. 1971.

**69-6617. Violation a misdemeanor.** Any person who violates section 16 [69-6616] shall be guilty of a misdemeanor.

**History:** En. Sec. 17, Ch. 436, L. 1971.

## CHAPTER 67—DIAGNOSTIC TESTS FOR PREGNANT WOMEN AND NEWBORN INFANTS

### Section

- 69-6701. Definitions.
- 69-6702. Prenatal blood sample required for serological test.
- 69-6703. Approved laboratories to perform test—report of positive results.
- 69-6704. Certificate form.
- 69-6705. Exhibit of results of test to patient and spouse—minor patient's parent or guardian.
- 69-6706. Information confidential—violation as misdemeanor.
- 69-6707. Administrative expenses.
- 69-6708. Waiver of test by court when contrary to patient's religious creed.
- 69-6709. Birth certificate to state whether test made.
- 69-6710. Definitions.
- 69-6711. Metabolic test required for newborn infant—approved laboratory.
- 69-6712. Administration—rules.
- 69-6713. Boulder river school assistance required.

**69-6701. Definitions.** (1) "Department" means department of health and environmental sciences.

(2) "Standard serological test" means a test for syphilis, rubella immunity, and blood group, including ABO (Landsteiner blood type designation—O, A, B, AB) and RH (Dd) type, approved by the department.

**History:** En. Sec. 1, Ch. 228, L. 1973.

**Title of Act**

An act providing for a standard serological test for women seeking prenatal care; providing for definitions; laboratory testing, certificate form, duties of physicians and other persons required to take sample;

disclosure of report, confidentiality of report, report to department of health of positive reports of test, use of information by department, when, report of birth to state if test made; exemption from provisions of act; and repealing sections 69-4612, 69-4613, 69-4614 and 69-4615, R. C. M. 1947.

**69-6702. Prenatal blood sample required for serological test.** Every female, regardless of age or marital status, seeking prenatal care from a physician, is required to submit blood specimen for the purpose of a standard serological test. In submitting the specimen to the laboratory, the physician shall designate it as a prenatal test.

(1) A physician or other person authorized by law to practice obstetrics who attends a pregnant woman shall at the first professional visit take the blood sample and submit it to a laboratory.

(2) A person permitted to attend a pregnant woman, but not permitted to take blood samples shall have the sample taken by a person permitted to take blood samples and submit it to a laboratory.

(3) Any physician or other person required to take the blood sample who violates this act is guilty of a misdemeanor. However, a person who requests a sample of blood in accordance with this provision, and whose request is refused, is not guilty of a violation of this section.

**History:** En. Sec. 2, Ch. 228, L. 1973.

**69-6703. Approved laboratories to perform test—report of positive results.** The tests shall be done by an approved laboratory. An approved laboratory shall be the laboratory of the department or a laboratory approved by the department. Any other state, United States public health service or United States armed forces laboratory shall be approved for the purpose of this act. The laboratory test may be made on request at the laboratory of the department. A reasonable fee for the test may be established by the department.

(1) Reasonable rules for reports to be submitted by any laboratory making tests, and the manner of furnishing the reports to the physician and the state shall be adopted by the department.

(2) All positive laboratory tests for any venereal diseases shall be reported to the department by the laboratory preparing the test. The department shall prescribe the form and way of reporting.

(3) The department may use information derived from reports of positive tests for venereal diseases for follow-up procedures required by law or considered necessary by the department for the protection of public health.

**History:** En. Sec. 3, Ch. 228, L. 1973.

**69-6704. Certificate form.** The "certificate form" to be provided the physician recording the results of the test made by the laboratory shall

be the same form as that provided with respect to premarital standard serological test in section 48-135.

History: En. Sec. 4, Ch. 228, L. 1973.

**69-6705. Exhibit of results of test to patient and spouse—minor patient's parent or guardian.** The report of the results of the test so certified by the laboratory shall be exhibited by the physician to the patient. Upon request of the patient, the report of the results of the test may be exhibited to the spouse of the patient, or, if the patient is a minor, report of the results of the test may be exhibited to the minor's parents or to the minor's legal guardian.

History: En. Sec. 5, Ch. 228, L. 1973.

**69-6706. Information confidential—violation as misdemeanor.** Certificates, laboratory statements or reports, or any other matters in this act referred to, and the information therein contained, shall be confidential and may not be divulged to or open to inspection by any person other than the patient or those designated by the patient to receive the information, or other than state and local health officers or their duly authorized representatives. A person who divulges this information or opens to inspection the certificates, statements, or reports, without authority, to any person not by law entitled to them, is guilty of a misdemeanor and may be fined not more than one hundred dollars (\$100).

History: En. Sec. 6, Ch. 228, L. 1973.

**69-6707. Administrative expenses.** The department shall provide all necessary printing and pay all necessary expenses relative to administration of the act.

History: En. Sec. 7, Ch. 228, L. 1973.

**69-6708. Waiver of test by court when contrary to patient's religious creed.** The district court within the county wherein any person affected by this act resides may waive the requirements of this act as to the person if the judge is satisfied, by affidavit or other proof, that the tests required by the act are contrary to the tenets or practices of the religious creed of which the applicant is an adherent, and that the public health and welfare will not be injuriously affected thereby.

History: En. Sec. 8, Ch. 228, L. 1973.

**69-6709. Birth certificate to state whether test made.** A birth or fetal death certificate shall state whether a standard serological test was made on the specimen of blood, but the birth or fetal death certificate may not show the result of the test. The certificate shall state the approximate date when the specimen was taken, and if no test was made, the reason shall be stated.

History: En. Sec. 9, Ch. 228, L. 1973.

#### **Separability Clause**

Section 10 of Ch. 228, Laws 1973 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its

applications, the part remains in effect in all valid applications that are severable from the invalid applications."

#### **Repealing Clause**

Section 11 of Ch. 228, Laws 1973 read "Sections 69-4612, 69-4613, 69-4614 and 69-4615, R. C. M. 1947, are repealed."



**69-6710. Definitions.** As used in this act:

(1) "Department" means the department of health and environmental sciences.

(2) "Person" means any individual, firm, partnership, association, corporation, or any other entity whether organized for profit or not.

(3) "Newborn" means any infant under twenty-eight (28) days of life.

**History:** En. Sec. 1, Ch. 227, L. 1973.

**Title of Act**

An act providing for infant screening; providing the department of health and environmental sciences require tests for newborn infants; providing for administration of the act; regulations; requir-

ing the availability of, and if requested, furnishing of assistance and services of the department of health and environmental sciences and the Boulder river school and hospital if tests are reported positive; and repealing section 69-4116, R. C. M. 1947.

**69-6711. Metabolic test required for newborn infant—approved laboratory.** (1) A person in charge of a facility wherein a child is born or wherein a newborn infant is cared for, or a person responsible for the registration of birth of an infant, shall ensure each infant is administered tests designed to detect inborn metabolic errors as shall be required to be administered under rules adopted by the department.

(2) The tests shall be done by an approved laboratory. An approved laboratory shall be the laboratory of the department or a laboratory approved by the department.

**History:** En. Sec. 2, Ch. 227, L. 1973.

**69-6712. Administration—rules.** This act shall be administered by the department, and the department may adopt rules for the administration of this act.

**History:** En. Sec. 3, Ch. 227, L. 1973.

**69-6713. Boulder river school assistance required.** (1) The department and the staff of the Boulder river school and hospital shall make available and furnish, when requested, any assistance and services permitted by law to achieve the legislative intent of this act.

(2) The department may determine its procedure for advising the attending physician, the parents or legal guardian of the newborn infant of any medical results of the test, and the availability of assistance, services or counseling of the department and the staff of the Boulder river school and hospital. The department may determine procedures for coordination with the Boulder river school and hospital in providing the services and assistance required in this act.

**History:** En. Sec. 4, Ch. 227, L. 1973.

**Separability Clause**

Section 5 of Ch. 227, Laws 1973 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its ap-

plications, the part remains in effect in all valid applications that are severable from the invalid applications."

**Repealing Clause**

Section 6 of Ch. 227, Laws 1973 read "Section 69-4116, R. C. M. 1947, is repealed."

## CHAPTER 68—MOTOR VEHICLE WRECKING FACILITIES

## Section

- 69-6801. Definitions.  
 69-6802. Motor vehicle wrecking facility license—application—fee—display—term—not transferable.  
 69-6803. Possession of junk vehicles as prima facie evidence of motor vehicle wrecking facility.  
 69-6804. Records required of facilities.  
 69-6805. County to provide motor vehicle graveyards—consolidation—budget.  
 69-6806. Crushing and recycling of junk vehicles.  
 69-6807. Deposit of fees—special junk vehicle assessment fee.  
 69-6808. Enforcement—adoption of rules.  
 69-6809. Denial, suspension or revocation of license—grounds.  
 69-6810. Injunction to enforce act—violation as misdemeanor.

**69-6801. Definitions.** Unless the context requires otherwise, in this act:

(1) "Motor vehicle wrecking facility" means a facility buying, selling, or dealing in four (4) or more vehicles per year of a type required to be licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle, or which buys or sells integral second-hand parts or component material thereof, in whole or in part, and deals in second-hand motor vehicle parts. The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

(2) "Motor vehicle graveyard" means a collection point for junk motor vehicles prior to their disposal.

(3) "Junk vehicle" means either a discarded, ruined, wrecked, or dismantled vehicle, or vehicle substantially changed in form by removal of parts or component materials, and in either case that remains in public view which is not lawfully and validly licensed and remains inoperative or incapable of being driven excluding antique vintage and classic vehicles.

(4) "Person" means any individual, firm, partnership, association, corporation, or any other entity whether organized for profit or not.

(5) "Department" means the department of health and environmental sciences provided for in Title 82A, chapter 6.

**History:** En. Sec. 1, Ch. 410, L. 1973.

#### Title of Act

An act providing for the licensing and regulation of motor vehicle wrecking facilities; controlling junk vehicles in non-wrecking yard locations; the establish-

ment of motor vehicle graveyard facilities, and related matters thereto; amending sections 32-4515 and 32-4516, R. C. M. 1947, to permit the licensing of junkyards by the department of health and environmental sciences; and the establishment of an effective date.

**69-6802. Motor vehicle wrecking facility license—application—fee—display—term—not transferable.** A person may not conduct, maintain, or operate a motor vehicle wrecking facility without a license issued by the department.

(1) Application for the license shall be made on forms furnished by the department.

(2) An annual fee of fifty dollars (\$50) shall be paid to the department for the license, or quarterly prorated for new facilities.

(3) A license shall be displayed in a prominent place in the licensed facility.

(4) The license expires on December 31 of the year issued.

(5) If a motor vehicle wrecking facility ceases to do business, the license shall be surrendered to the department. The license is not transferable.

History: En. Sec. 2, Ch. 410, L. 1973.

**69-6803. Possession of junk vehicles as prima facie evidence of motor vehicle wrecking facility.** (1) Possession at a single location, of four (4) or more junk vehicles of a type required to be licensed, is prima facie evidence that the possessor is operating a motor vehicle wrecking facility.

(2) A person who owns or possesses at a single location four (4) or more junk vehicles of a type required to be licensed is subject to this act even though he is not operating a motor vehicle wrecking facility.

History: En. Sec. 3, Ch. 410, L. 1973.

**69-6804. Records required of facilities.** (1) Every motor vehicle wrecking facility shall maintain books or files in which is kept a record and description of every junk vehicle obtained by it, together with the name of the person from whom the vehicle was purchased.

(2) This record shall also contain:

(a) the certificate of title or sheriff's certificate of sale, or a written release from the former owner;

(b) the name of the state where the vehicle was last registered;

(c) the number of the last license plate;

(d) the make of the vehicle;

(e) the motor or identification number or serial number;

(f) the date purchased;

(g) the disposition of motor and chassis.

(3) When a motor vehicle wrecking facility submits a junk vehicle to the disposal program, it shall pay a disposal fee of two dollars (\$2) for each vehicle submitted and it shall surrender to the department all records maintained as required in subsections (1) and (2) of this section, and the vehicle is then the property of the state.

History: En. Sec. 4, Ch. 410, L. 1973.

**69-6805. County to provide motor vehicle graveyards—consolidation—budget.** (1) (a) Each county shall acquire, develop, and maintain property for free motor vehicle graveyards. The property may be acquired by purchase, lease, or otherwise.

(b) As an alternative, the county may contract for the maintenance and operation of a motor vehicle graveyard or graveyards.

(c) Two (2) or more counties may join to form a district for the purpose stated in this section. If a district is formed, all provisions of this act pertaining to a county also apply to a district formed under this subsection.



(d) When there is an accumulation of at least two hundred (200) junk vehicles in the graveyard, the county shall notify the department for disposal purposes.

(2) (a) A county shall submit to the department for approval a plan for the collection of junk vehicles and the establishment and operation of the motor vehicle graveyard.

(b) Prior to June 15, the county shall submit to the department for approval a proposed budget for the succeeding fiscal year.

(c) Any proposed change in the budget or plan must be approved by the department.

(d) The budget shall be for the amounts required by the county for collection costs and acquisition, maintenance, and operation of the graveyard.

**History: En. Sec. 5, Ch. 410, L. 1973.**

**69-6806. Crushing and recycling of junk vehicles.** (1) The department shall contract for final disposition of junk vehicles accumulated in motor vehicle graveyards and shall provide for crushing and recycling the material from the vehicles.

(2) The department may also contract to dispose of, by crushing and recycling, junk vehicles accumulated in the yard of a motor vehicle wrecking facility. The department may so contract only upon the request of the facility and only if there is an accumulation of at least two hundred (200) vehicles at the facility.

(3) All moneys received from the sale of the junk vehicles or from recycling of the material shall be deposited with the state treasurer to be utilized for the control, collection, and disposal of junk vehicles.

(4) Any individual may dispose of a junk vehicle by delivering the vehicle to a motor vehicle graveyard and by delivering to the department the certificate or evidence of title to the vehicle, or a written release of the vehicle.

**History: En. Sec. 6, Ch. 410, L. 1973.**

**69-6807. Deposit of fees—special junk vehicle assessment fee.** (1) All motor vehicle wrecking facility license fees and fees collected as motor vehicle disposal fees shall be deposited with the state treasurer to be utilized for the control, collection, and disposal of junk vehicles.

(2) There is assessed a special junk vehicle disposal fee commencing on July 1, 1973, on each new application for a motor vehicle title and on each transfer of motor vehicle title in the amount of four dollars (\$4), on passenger cars and trucks under 8001 pounds GVW, which shall be collected by the county treasurer, and commencing with the year 1974, there shall be assessed an additional special junk vehicle disposal fee in the amount of one dollar (\$1) on each passenger car and truck under 8001 pounds GVW registered for licensing. The one dollar (\$1) fee shall be collected by the county treasurer. However, the following are exempt from payment of the fees:

(a) vehicles leased or owned by the state or by a county or municipality;

(b) vehicles used for transportation by nonresident, migratory workers temporarily employed in agricultural work in this state;

(c) vehicles displaying dealers' license plates, as provided in section 53-122, while owned by a dealer;

(d) house trailers or equipment which are not self-propelled or which require towing upon a highway of this state.

(3) The department shall report to each legislature the amount collected under this act and the cost of administration of the act to date so that any necessary adjustment of the amount of the fee may be made to assure that no more than the actual cost of operation of the program is collected.

(4) The department shall pay to a county the amount of the approved budget of the county. However, the yearly payment may not exceed one dollar (\$1) for each motor vehicle that is licensed in that county.

**History:** En. Sec. 7, Ch. 410, L. 1973.

**69-6808. Enforcement—adoption of rules.** The department shall adopt rules necessary to administer and enforce this act, including, but not limited to, rules pertaining to:

(1) the control, operation, and licensing of motor vehicle wrecking yards;

(2) the control of junk vehicles in locations other than motor vehicle wrecking yards;

(3) the inspection and evaluation of premises and records subject to or required by this act;

(4) the development of budget and fiscal forms and procedures for counties;

(5) the review, approval, and control procedures for county motor vehicle graveyards developed under this act.

**History:** En. Sec. 8, Ch. 410, L. 1973.

**69-6809. Denial, suspension or revocation of license—grounds.** The department may deny, suspend, or revoke a motor vehicle wrecking facility's license when it proves the business:

(1) sold or otherwise disposed of a motor vehicle, trailer, or any part thereof when it knew the vehicle or part was stolen or was appropriated without the consent of the owner;

(2) committed forgery on a certificate of title covering a vehicle that has been re-assembled from parts obtained from the disassembling of other vehicles;

(3) committed any illegal act or omission which has caused loss as the result of a sale of a motor vehicle, trailer, or part thereof;

(4) failed to comply with this act or with a rule of the department;

(5) obtained a license fraudulently.

**History:** En. Sec. 9, Ch. 410, L. 1973.

**69-6810. Injunction to enforce act—violation as misdemeanor.** (1) The department, through the attorney general or the county attorney of the county in which a facility is located, may sue to enjoin the operation

or maintenance of an unlicensed motor vehicle wrecking facility either permanently or until compliance with this act and the rules of the department has been demonstrated to the satisfaction of the department.

(2) Violation of this act or a rule of the department adopted under this act is a misdemeanor.

**History:** En. Sec. 10, Ch. 410, L. 1973.

"If any section, subsection, sentence, clause, or provision of the act is held invalid, the remainder of the act is not affected."

**Separability Clause**

Section 11 of Ch. 410, Laws 1973 read

CHAPTER 69—ABORTION COUNSELORS AND COUNSELING SERVICES

Section

69-6901. Purpose of act.

69-6902. Definitions.

69-6903. Purpose of counseling.

69-6904. Responsibility of the division.

69-6905. Approval of counselors.

69-6906. Responsibility of medical facilities.

69-6907. Minimum counseling services.

69-6908. When counseling required.

**69-6901. Purpose of act.** The state of Montana, recognizing the complexity and gravity of decisions associated with medical termination of pregnancy, declares it the policy of the state to provide for the accessibility of approved counseling services for any female resident of Montana who may request medical termination of her pregnancy. The policy stated in this act shall be a minimum standard for abortion counseling services and is not intended to limit the availability.

**History:** En. 69-6901 by Sec. 1, Ch. 266, L. 1974.

who requests an abortion, at least two (2) counseling sessions with a qualified counselor, and providing qualifications for such counselors.

**Title of Act**

An act to make available to a woman

**69-6902. Definitions.** For the purposes of this act, the following terms are defined as follows:

(1) Abortion is the intentional termination of pregnancy.

(2) The division is the division of maternal and child health care of the department of health and environmental sciences.

(3) Approved counselor is a person approved by the division for the counseling provided for in this act.

(4) Medical facility is any office, clinic, or hospital where abortion or the scheduling of abortion takes place.

(5) Priority appointment is any appointment with a counselor approved by the division for abortion counseling, which shall be arranged at the earliest reasonable time in the counselor's schedule.

**History:** En. 69-6902 by Sec. 2, Ch. 266, L. 1974.

**69-6903. Purpose of counseling.** The purpose of the counseling of patients considering abortion shall be:

(a) to assist the patient in recognizing and evaluating all of the possible alternatives open to her;



(b) to encourage the patient to face and express her deep feelings in regard to the multiple aspects of abortion;

(c) to enhance the mental stability of the patient in regard to her decision;

(d) to encourage the responsible facing of any decision in regard to abortion at the earliest possible state of her pregnancy.

History: En. 69-6903 by Sec. 3, Ch. 266,  
L. 1974.

**69-6904. Responsibility of the division.** (1) The division shall approve persons who are able to provide effective consultation concerning problem pregnancy as abortion counselors. There shall be sufficient counselors approved to meet the demand for their services.

(2) The division shall prepare a list of approved counselors and disseminate it to the public through the assistance of co-operative physicians, medical facilities, social workers, school counselors, and other means deemed appropriate.

History: En. 69-6904 by Sec. 4, Ch. 266,  
L. 1974.

**69-6905. Approval of counselors.** (1) The division in consultation with the mental health division of the board of institutions, shall develop criteria and standards concerning the approval of counselors called for in this act. These criteria should include, but not be limited to, consideration of the following qualifications:

(a) proficiency, experience, and training in the field of counseling;

(b) understanding of the problems related to abortion;

(c) ability to remain objective in regard to the patient's choice of alternative courses of action;

(d) ability to hold in confidence all personal information revealed in or, in regard to counseling sessions.

(2) In its process of evaluating and approving counselors for the implementation of this act, the division shall co-operate with appropriate state agencies and local government subdivisions, subject to ethical considerations as practiced by accredited medical and therapeutic professions.

(3) Approved counselors for the purpose of this act may be chosen from among local representatives of such professions as: psychologists, social workers, clergymen, nurses, school counselors, mental health personnel, and family planning counselors.

(4) The division shall assist and make use of medically creditable resources offered by existing programs and agencies which deal with counseling.

(5) The division shall be responsible for re-evaluating the counseling services provided for in this act at intervals of not more than five (5) years.

History: En. 69-6905 by Sec. 5, Ch. 266,  
L. 1974.

**69-6906. Responsibility of medical facilities.** (1) Upon first indication by a female patient or potential patient that medical termination of preg-

nancy is being considered, a physician or medical facility shall inform the patient of the availability of qualified counselors and shall, with the patient's approval, refer her to an approved counselor for a priority appointment.

(2) In the case of an unmarried minor, the physician, or medical facility, or their designate, shall make a priority appointment for the patient to meet with an approved counselor of the patient's choice.

History: En. 69-6906 by Sec. 6, Ch. 266,  
L. 1974.

**69-6907. Minimum counseling services.** (1) Minimum counseling services shall be provided to any pregnant woman residing in Montana who may express an interest in terminating her pregnancy.

(2) Minimum counseling services shall include, but may not be limited to, one counseling session before and one after a termination of pregnancy.

(3) If reasonable, and desired by the patient, the counselor may include the father of the unborn child or any other pertinent family members in a subsequent meeting with the patient.

(4) Where the person seeking the counseling cannot afford to pay the minimum fee, the division will find a counselor who is reasonably accessible for the patient who will provide counseling services at no cost.

History: En. 69-6907 by Sec. 7, Ch. 266,  
L. 1974.

**69-6908. When counseling required.** No abortion may be contingent upon completion of counseling.

History: En. 69-6908 by Sec. 8, Ch. 266,  
L. 1974.

## CHAPTER 70—EMERGENCY MEDICAL SERVICES PROGRAM

### Section

69-7001. Declaration of policy and purpose.

69-7002. Emergency medical services program—duties of department.

**69-7001. Declaration of policy and purpose.** The public welfare requires the providing of assistance and encouragement for the development of a comprehensive emergency medical services program for Montanans who each year are dying and suffering permanent disabilities needlessly because of inadequate emergency medical services. The repeated loss of persons who die unnecessarily because necessary life support personnel and equipment are not available to victims of accidents and sudden illness is a tragedy that can and must be eliminated. The development of an emergency medical services program is in the interest of the social well-being and health and safety of the state and all its people.

History: En. 69-7001 by Sec. 1, Ch. 311,  
L. 1974.

of an emergency medical services program by the department of health and environmental sciences.

### Title of Act

An act providing for the administration

**69-7002. Emergency medical services program—duties of department.**

The department of health and environmental sciences shall establish and administer an emergency medical services program. The department is authorized to confer and co-operate with any and all other persons, organizations and governmental agencies that have an interest in emergency medical services problems and needs, and the department is authorized to accept, receive, expend and administer any and all funds which are now available or which may be donated, granted or appropriated to the department of health and environmental sciences. The department of health and environmental sciences and the department of intergovernmental relations, highway safety division and other interested departments or divisions, shall develop in writing a mutually agreeable plan of co-operation, so that governmental effort will not be duplicated and governmental resources will be applied on a reasonable priority basis.

**History:** En. 69-7002 by Sec. 2, Ch. 311,  
L. 1974.











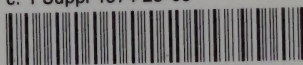
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